



Delaware

Department of Education

Child Nutrition Programs Procurement Manual February 2023



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

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1. **mail:**
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. **fax:**
(833) 256-1665 or (202) 690-7442; or
3. **email:**
Program.Intake@usda.gov

This institution is an equal opportunity provider.

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

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

USDA thresholds must be followed unless the State or local thresholds are more stringent; then, the most stringent threshold is followed. For example: both USDA and Delaware allow the purchase of goods or non-professional services of up to \$10,000 to be an open market purchase; quotes are not required. USDA’s small purchase threshold, which requires obtaining quotes, is \$250,000. Delaware’s small purchase threshold is up to \$100,000 for goods and non-professional services and up to \$149,999 for professional services. Delaware’s small purchase threshold is more stringent than USDA’s; therefore, Sponsors must follow Delaware’s small purchase thresholds.

THRESHOLDS	
DELAWARE	USDA
<ul style="list-style-type: none"> • Less than \$10,000 – open market purchase • \$10,000 - \$99,999 – quotes (informal procurement) • For goods and non-professional services \$100,000 or more – Bid or Proposal (formal procurement) • For professional services \$150,000 or more – formal procurement 	<ul style="list-style-type: none"> • \$10,000 or less – micro-purchase (same as open market purchase) • \$250,000 or less – quotes (informal procurement) • \$250,001 or more – Bid or Proposal (formal procurement)

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

- ✓ Less than \$10,000 – micro-purchase
- ✓ \$10,000 to \$99,999 – informal procurement for goods and non-professional services (solicit at least three quotes)
- ✓ \$10,000 to \$149,999 – informal procurement for professional services (solicit at least three quotes)
- ✓ \$100,000 and over – formal procurement for goods and non-professional services (Invitation for Bid (IFB) or Request for Proposal (RFP))
- ✓ \$150,000 and over – formal procurement for professional services (IFB or RFP)

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



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

Reasons to Conduct Proper Procurement:

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

Child Nutrition Program Procurement Specific Regulations:

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

Federal Procurement Regulations (governs all federal funds):

- ✓ [2 CFR 200.317-326](#)

Procurement Procedures and Written Standard of Conduct:

- ✓ [2 CFR 200.318\(a\)](#) requires all non-federal agencies (Sponsors) to have documented **procurement procedures** that reflect applicable State, local, and tribal laws and regulations, as long as the procurements conform to applicable federal law and standards in [2 CFR Part 200](#).
 - Procurement procedures, often referred to as procurement plans, are a written set of procedures and instructions for conducting procurement. Written plans and procedures identify what needs to be done, who is responsible for doing it, and the process for doing it. The plan should include a step-by-step process for purchasing goods and services.
 - Procurement procedures must include language required in [2 CFR 200.321](#). Additionally, [2 CFR 200.321](#), [7 CFR 225.17\(d\)](#), and [7 CFR 226.22\(f\)](#) require that Sponsors make certain that necessary affirmative steps are taken to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps include:
 - (1) Placing qualified small and minority businesses, and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

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

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

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

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

- ✓ **2 CFR 200.318(c)(1)** requires all non-federal agencies (Sponsors) to maintain written **standards of conduct** covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. Standards of conduct, often referred to as a code of conduct, must prohibit employees from soliciting or accepting gifts, travel packages, and other incentives from prospective contractors. In addition, the code of conduct must prohibit an employee from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them, have financial interest.

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

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

When Planning a Procurement:

- ✓ *Forecast*
 - What do you need
 - When do you need it
 - How much do you need
 - What is the market value – do your research!
- ✓ *Specifications* – a description of what goods or services you need to purchase. It is very important to be as specific as you need to be in order to get the goods or services you require. (Examples)



- 100 lunches that meet the USDA meal pattern for grades K-6, delivered at 11:00 a.m. daily, inclusive of milk, for 185 days.
 - Combi Oven, gas, installation included, etc.
 - 100 fresh, whole Red Delicious apples, delivered weekly by 9:00 a.m.
- ✓ *Procurement Method:* Once you forecast what you need and write your specifications, you are ready to begin the procurement. The procurement method you use depends on the estimated dollar value of the goods or services you are purchasing.
- ✓ *Monitor the Contract:* Once your procurement is completed and the contract has been awarded to the most responsive and responsible vendor, Sponsors must monitor the contract to ensure:
- The terms of the contract are being met
 - Goods are delivered as required per the contract
 - Invoice prices match the prices awarded, etc.

Not all procurement provisions apply to all Child Nutrition Programs. The table below shows specific procurement provisions that apply to specific Child Nutrition Programs. For example, the Buy American Provision must be part of all solicitations and contracts for foods purchased in the National School Lunch and School Breakfast Programs, but is not required in the Summer Food Service Program or Child and Adult Care Food Program.

Program Specific Procurement Standards			
Programs	Buy American Provision	Cost-Reimbursable Contract Provision	Geographic Preference
NSLP/SBP	7 CFR Parts 210.21(d) and 220.16(d)	7 CFR Parts 210.21(f), 200.16(e), and 250.53	7 CFR Part 210.21(g) and 220.16(f)
SFSP	-	-	7 CFR Part 225.17(e)
CACFP	-	-	7 CFR Part 226.22(n)

Purchasing Methods:

1. **Micro-Purchase:** Purchases made where the **annual cumulative total** is less than \$10,000.

When using the micro-purchase method:

- Soliciting quotes is not required;
- Prices must be reasonable; and
- Purchases should be distributed equitably among qualified suppliers to ensure that free and open competition occurs.

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

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

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

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

2. **Small Purchase (Informal Procurement):** Informal procurement, often referred to as “Three Bids and a Buy”, allows program operators to request quotes from an adequate number of vendors (three) without issuing a formal bid or request. This method can be used when the estimated purchase amount falls below \$100,000 for goods and non-professional services or under \$150,000 for professional services.

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

SNP Example: The reach-in refrigerator and reach-in freezer need to be replaced in a school. In conducting research, the SFA determines that replacing both the reach-ins will cost approximately \$11,000 - \$13,000. The SFA drafts the specifications needed and contacts three (3) equipment vendors known to carry and stock reach-ins. This can be done over the phone or via email. The SFA documents the quotes provided and awards to the vendor that is the most responsive and responsible with the lowest price.

SFSP Example: A Sponsor needs to purchase 10 mobile warmers for their expanding mobile program and for serving hot meals. In conducting research, the Sponsor determines each warmer will cost approximately \$4,000. The Sponsor drafts the specifications and contacts three (3) vendors for price quotes. The Sponsor documents the quotes provided on the SFSP Informal Quote Log. The Sponsor then selects the vendor that is most responsive and responsible with the lowest price.

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

- 3. Formal Procurement:** Formal procurement must be used when purchasing goods and non-professional services in Delaware of \$100,000 and over or \$150,000 and over for professional services. Per 2 CFR 200.324(a), the Sponsor must perform a cost or price analysis in connection with every formal procurement, including contract modifications. As a starting point, the Sponsor should make independent price/cost estimates before soliciting for and receiving bids or proposals.

Bid Bond and Performance Bond Requirements:

SFSP: The SFSP requires the following regarding bonds:

- **Bid Bond Requirement** - For bids over \$150,000, a bid bond in the amount of 10 percent of the estimated value of the contract for which the bid is made must accompany the bid. The bid bond must be from a company listed in the current United States

Department of Treasury Circular 570 certified to do business in Delaware. No other type of bid bond is acceptable.

- **Performance Bond Requirement** - For contracts over \$150,000, a performance bond equal to at least 10 percent, but not more than 25 percent of the value of the winning contract, must be obtained by the contractor. The performance bond must be from a company listed in the current United States Department of Treasury Circular 570 certified to do business in Delaware. The contractor must furnish a copy of the bond to the Sponsor within 10 days of the contract's award. The performance bond must include the entire period that Sponsor will operate the feeding program. Sponsors may not accept cash, letter of credit, trust account, land, or any other form of guarantee in lieu of the performance bond.

SNP and CACFP:

- **Bid Bonds** - The bid bond security need not be for a specific sum but may be stated to be for a sum equal to 10% of the bid to which it relates. A bid bond or bid security may be stated as a certain stated sum provided that the sum is equal to or greater than 10% of the bid. A SFA or a CACFP Sponsor may choose to waive the requirement of a bid bond. The decision to waive the requirement of a bid bond must be clearly stated in the bid special provisions.
- **Performance Bonds** - The procuring agency may require the successful bidder to execute a good and sufficient bond to the State for the benefit of the agency. A SFA or a CACFP Sponsor may waive, or reduce, the performance bond requirement from the successful bidder. Such a waiver or reduction must be stated in the bid specifications. The Performance bond shall be with a corporate surety authorized to do business in this state and be in a sum equal to 100% of the contract award. Examples of when performance bonds could be beneficial is for materials (such as an industrial kitchen range) or professional services (such as custom technology solutions).

Types of Formal Procurement: There are different methods of formal procurement depending on what you are purchasing:

- **Request for Proposal (RFP)**
- **Invitation for Bid (IFB)**
- **Non-Competitive Proposal**

A **RFP** is used when procuring goods or services where factors in addition to price must be considered. A RFP:

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

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

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

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

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

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

Price	_____	30 points
Cycle Menu Acceptance	_____	20 points
Fresh Fruits & Vegetables	_____	20 points
References	_____	20 points
Total	_____	out of 90

An **IFB** can be used when purchasing goods or services where price is the only difference. Characteristics of an IFB include:

- ✓ IFB must be publicly solicited and opened;
- ✓ Fixed price contracts only;
- ✓ No significant difference among goods, products, or services except price;
- ✓ A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder; and
- ✓ Negotiation is not used.

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

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

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

- 4. Non-Competitive Proposal:** Solicitation of a proposal from only one source can only be used:
- ✓ If, after solicitation from a number of sources, competition is inadequate;
 - ✓ An emergency situation;
 - ✓ True “sole source” exists, only one vendor provides the goods or services; and
 - ✓ Must obtain prior approval from State Agency.

Adequate documentation for non-competitive procurement must be maintained.

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

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

<u>APPENDIX II TO PART 200</u> — <i>CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS</i>	
<i>In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.</i>	
Administrative, contractual, or legal remedies	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.
Termination for cause and for convenience	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.
Equal Employment Opportunity	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.”
Davis-Bacon Act (prime construction contracts only)	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

	<p>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.</p>
<p>Contract Work Hours and Safety Standards Act</p>	<p>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.</p>
<p>Rights to Inventions Made Under a Contract or Agreement</p>	<p>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.</p>

Clean Air Act and the Federal Water Pollution Control Act	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).
Debarment and Suspension	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.
Byrd Anti-Lobbying Amendment	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.
<p>Title 2: Grants and Agreements</p> <p>PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS</p> <p>Subpart D—Post Federal Award Requirements</p>	
§200.322 Domestic preferences for procurements.	(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

	<p>(b) For purposes of this section:</p> <p>(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.</p> <p>(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.</p>
<p>§200.323 Procurement of recovered materials.</p>	<p>A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.</p>
<p>Title 2: Grants and Agreements PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards</p>	
<p>§200.216 Prohibition on certain telecommunications and video surveillance services or equipment.</p>	<p>(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:</p> <p>(1) Procure or obtain;</p> <p>(2) Extend or renew a contract to procure or obtain; or</p> <p>(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company</p>

	<p>or ZTE Corporation (or any subsidiary or affiliate of such entities).</p> <p>(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).</p> <p>(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.</p> <p>(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.</p> <p>(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.</p> <p>(c) See Public Law 115-232, section 889 for additional information.</p> <p>(d) See also §200.471.</p>
<p>Buy American Provision – National School Lunch Program and School Breakfast Program Requirement</p> <p>7 CFR 210.21 Procurement, and 7 CFR 220.16 Procurement Standards</p>	
<p>Buy American Provision</p>	<p><i>Buy American - (1) Definition of domestic commodity or product.</i> In this paragraph (d), the term ‘domestic commodity or product’ means -</p> <p>(i) An agricultural commodity that is produced in the United States; and</p>

	<p>(ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.</p> <p>(2) <i>Requirement.</i> (i) <i>In general.</i> Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.</p> <p>(ii) <i>Limitations.</i> Paragraph (d)(2)(i) of this section shall apply only to -</p> <p>(A) A school food authority located in the contiguous United States; and</p> <p>(B) A purchase of domestic commodity or product for the school lunch program under this part.</p> <p>(3) <i>Applicability to Hawaii.</i> Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this part.</p>
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Contracting with Food Service Management Companies (FSMC) or Commercial Vendors:

Delaware Department of Education Nutrition Programs has a template RFP for FSMC and Vended Meals. SFAs and Sponsors must use these templates when procuring a FSMC or pre-plated meal vendor. It is extremely important that you plan the procurement and write out your specifications. When reviewing the RFPs make sure:

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

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

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

Schools, daycares, and summer sites receiving funds through USDA federal reimbursements may apply geographic preferences when procuring unprocessed, locally grown, or locally raised agricultural products.

APPENDICES

- I. Informal Procurement Quote Log
- II. SNP Sample Bid Solicitation
- III. CACFP Sample Bid Solicitation
- IV. SFSP Sample Bid Solicitation
- V. 2 CFR Parts 200.317 – 200.326 Super Circular, Procurement Standards

LINKS

- Delaware Department of Education, CACFP Procurement Page: <https://www.doe.k12.de.us/Page/2788>
- Delaware Department of Education, SNP Procurement Page: <https://www.doe.k12.de.us/Page/2805>
- Delaware Department of Education, SFSP Procurement Page: <https://www.doe.k12.de.us/Page/2813>
- State of Delaware Awarded Vendors: http://contracts.delaware.gov/vendor_list.asp?c=0&s=a All SFAs and Nonprofit Program Sponsors operating Child Nutrition Programs in Delaware may access contracts awarded by Government Support Services.
- Delaware Farm to School: <https://agriculture.delaware.gov/communications-marketing/farm-to-school/>

GLOSSARY

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

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

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

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

Cost-Reimbursable Contract: A cost reimbursable contract is a formal, legally enforceable contract that reimburses the vendor for costs incurred under the contract but does not provide for any other payment to the contractor, with or without a fixed fee. In a cost reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the vendor net of all discounts,

rebates, and other applicable credits accruing to or received by the vendor. Additionally, this rule requires vendors to provide sufficient information to permit the SFA to identify allowable and unallowable costs and the amount of all such discounts, rebates, and credits on invoices and bills presented for payment to the SFA.

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

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

Appendix I – Informal Procurement Quote Log

- School Nutrition Programs
- Summer Food Service Program
- Child and Adult Care Food Program

INFORMAL PROCUREMENT “QUOTES” LOG AND EVALUATION MATRIX

(Purchases costing more than \$10,000 and less than \$100,000)

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

INFORMAL PROCUREMENT “QUOTES” LOG AND EVALUATION MATRIX
(Purchases costing more than \$10,000 and less than \$100,000)
INSTRUCTIONS FOR COMPLETION

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

Appendix II – SNP Sample Bid Solicitation

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

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

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

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

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

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

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

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Appendix III – CACFP Sample Bid Solicitation

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

Invitation for Bid may be obtained by contacting:

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

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

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

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

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Appendix IV – SFSP Sample Bid Solicitation

SAMPLE BID ADVERTISEMENT – VENDED MEALS

SUMMER FOOD SERVICE PROGRAM (SFSP)

(Insert Sponsoring Organization Name), an approved SFSP Sponsor in the State of Delaware, invites the submission of sealed bids for prepackaged meals meeting program requirements as described in the bid specification and contract. Bids containing dual prices for one meal type that are tied to a Sponsor’s ultimate level of meal service will be rejected. These meals are to be served to children in the SFSP. Delivery is made as per bid specifications and contract. Specifications and contract may be obtained as of (Insert Date) from (Insert Sponsoring Organization Name). Sealed bids clearly marked on the outside envelope, “Summer Food Service Program Bid,” along with a sample lunch, are to be received by (Insert Date) at (Insert Time) at (Insert Sponsor Location), at which time all bids will be opened.**

**Bond Requirements (to be added to notice, if applicable):

- For bids over \$150,000, a bid bond in the amount of 10 percent of the estimated value of the contract for which the bid is made must accompany the bid. The bid bond must be from a company listed in the current United States Department of Treasury Circular 570 and certified to do business in Delaware. No other type of bid bond is acceptable.
- For contracts over \$150,000, a performance bond equal to at least 10 percent, but not more than 25 percent of the value of the winning contract, must be obtained by the contractor. The performance bond must be from a company listed in the current United States Department of Treasury Circular 570 certified to do business in Delaware. The contractor must furnish a copy of the bond to the Sponsor within 10 days of the contract’s award.

NOTE: THERE IS A 14 DAY PUBLIC NOTIFICATION PERIOD REQUIRED FOR REQUESTS FOR BIDS

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

§200.317 Procurement by states.

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

§200.318 General procurement standards.

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

(b) Non-federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-federal entity. (2) If the non-federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

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

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the federal government, the non-federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

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

(g) The non-federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

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

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

(j)(1) The non-federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-federal entity is the sum of:

(i) The actual cost of materials; and

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

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-federal entity of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgment for

that of the non-federal entity unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

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

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

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the

performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

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

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

§200.320 Methods of procurement to be followed.

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

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

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

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

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

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

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

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

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

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

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

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

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

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

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

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

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

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

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

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

(e) [Reserved]

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

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

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

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

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring

only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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

§200.323 Contract cost and price.

(a) The non-federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-federal entity must make independent estimates before receiving bids or proposals.

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

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

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

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

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

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

(1) The non-federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

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

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

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

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

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

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

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-federal entity provided that the federal awarding agency or pass-through entity has made a determination that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable

instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

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

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

§200.326 Contract provisions.

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

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