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3. **Email:** [program.intake@usda.gov](mailto:program.intake@usda.gov).

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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:

- Delaware allows the purchase of goods or non-professional services of less than \$50,000 to be an open market purchase; quotes are not required. USDA allows open market purchases of up to \$15,000; quotes are not required. USDA’s open market purchase threshold is more stringent than Delaware’s; therefore, Sponsors must follow USDA’s open market purchase threshold.
- USDA’s small purchase threshold, which requires obtaining quotes, is \$350,000. Delaware’s small purchase threshold is up to \$99,999.99 for goods and non-professional services and up to \$149,999.99 for professional services. Delaware’s small purchase threshold is more stringent than USDA’s; therefore, Sponsors must follow Delaware’s small purchase thresholds.

<b>THRESHOLDS</b>	
<b>DELAWARE</b>	<b>USDA</b>
<ul style="list-style-type: none"> <li>• Less than \$50,000 – open market purchase</li> <li>• \$50,000 - \$99,999.99 – quotes (informal procurement)</li> <li>• For goods and non-professional services \$100,000 or more – Bid or Proposal (formal procurement)</li> <li>• For professional services \$150,000 or more – formal procurement</li> </ul>	<ul style="list-style-type: none"> <li>• \$15,000 or less – micro-purchase (same as open market purchase)</li> <li>• \$15,000.01 - \$350,000 – quotes (informal procurement)</li> <li>• \$350,001 or more – Bid or Proposal (formal procurement)</li> </ul>

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

- ✓ Up to \$15,000 – micro-purchase
- ✓ \$15,000.01 to \$99,999.99 – informal procurement for goods and non-professional services (solicit at least three quotes)

- ✓ \$15,000.01 to \$149,999.99 – 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 \$15,000 or less. 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 \$16,000 - \$20,000. 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 \$20,000. 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 clearly 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.

<i>APPENDIX II TO PART 200—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

	<p>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.”</p>
<p>Davis-Bacon Act (prime construction contracts only)</p>	<p>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.</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</p>

	<p>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>
<p>Clean Air Act and the Federal Water Pollution Control Act</p>	<p>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).</p>
<p>Debarment and Suspension</p>	<p>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</p>

	<p>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.</p>
<p>Byrd Anti-Lobbying Amendment</p>	<p>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>
<p>Title 2: Grants and Agreements  PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS  Subpart D—Post Federal Award Requirements</p>	
<p><a href="#">§200.322 Domestic preferences for procurements.</a></p>	<p>(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> <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</p>

	chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
<a href="#">§200.323 Procurement of recovered materials.</a>	<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>	
<a href="#">§200.216 Prohibition on certain telecommunications and video surveillance services or equipment.</a>	<p>(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:</p> <ul style="list-style-type: none"> <li>(1) Procure or obtain;</li> <li>(2) Extend or renew a contract to procure or obtain; or</li> <li>(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 or ZTE Corporation (or any subsidiary or affiliate of such entities).</li> </ul> <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</p>

	<p>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><a href="#">7 CFR 210.21 Procurement</a>, and <a href="#">7 CFR 220.16 Procurement Standards</a></p>	
Buy American Provision	<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 CACFP:** 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. For more information about using the geographic preference option, see SP22-2-24, CACFP 08-2024, SFSP 13-2024 [Geographic Preference Expansion Related to the Final Rule](#) and SP24-2024, CACFP 10-2024, SFSP 14-2024 [Geographic Preference option Questions and Answers](#).

## 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://education.delaware.gov/educators/whole-child-support/nutrition/cacfp/#procurement>
- Delaware Department of Education, SNP Procurement Page: <https://education.delaware.gov/educators/whole-child-support/nutrition/snp/#procurement>
- Delaware Department of Education, SFSP Procurement Page: <https://education.delaware.gov/educators/whole-child-support/nutrition/sfsp/#procurement>
- State of Delaware Awarded Vendors: <https://mmp.delaware.gov/> - All SFAs and Nonprofit Program Sponsors operating Child Nutrition Programs in Delaware may access contracts awarded by Government Support Services.
- Nutrition Programs Vendor List: [https://education.delaware.gov/wp-content/uploads/2025/11/Nutrition\\_Program\\_Wide-Vendor\\_List.pdf](https://education.delaware.gov/wp-content/uploads/2025/11/Nutrition_Program_Wide-Vendor_List.pdf)
- 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 \$15,000 and less than \$100,000)

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

**INFORMAL PROCUREMENT “QUOTES” LOG AND EVALUATION MATRIX**  
**(Purchases costing more than \$15,000 and less than \$100,000)**  
**INSTRUCTIONS FOR COMPLETION**

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

- X. (a) Enter name of vendor/bidder selected.
- (b) Enter date selected vendor/bidder was notified.
- (c) Enter method of notification.

## Appendix II – SNP Sample Bid Solicitation

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

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

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

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

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

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

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

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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].

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

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

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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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**§200.317 Procurement by States and Indian Tribes.**

When conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in [§§ 200.318](#) through [200.327](#). In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: [§§ 200.321](#), [200.322](#), [200.323](#), and [200.327](#). All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in [§§ 200.318](#) through [200.327](#).

**§200.318 General procurement standards.**

(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.

### **§200.319 Competition.**

(a) All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and is consistent with the standards of this section and [§ 200.320](#).

(b) To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.

(c) Examples of situations that may restrict competition include, but are not limited to:

(1) Placing unreasonable requirements on firms 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.

(d) The recipient or subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Are made in accordance with [§ 200.319\(b\)](#);

(2) Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. The description may include a statement of the qualitative nature of the property, equipment, or service to be procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a “brand name or equivalent” description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated; and

(3) Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.

(e) The recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the recipient or subrecipient must consider objective factors that evaluate price and cost to maximize competition. The recipient or subrecipient must not preclude potential bidders from qualifying during the solicitation period.

(f) To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent

with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

(g) Noncompetitive procurements can only be awarded in accordance with [§ 200.320\(c\)](#).

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

There are three types of procurement methods described in this section: informal procurement methods (for micro-purchases and simplified acquisitions); formal procurement methods (through sealed bids or proposals); and noncompetitive procurement methods. For any of these methods, the recipient or subrecipient must maintain and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317, 200.318, and 200.319](#).

(a) **Informal procurement methods for small purchases.** These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction under the Federal award does not exceed the simplified acquisition threshold as defined in [§ 200.1](#). Recipients and subrecipients may also establish a lower threshold. Informal procurement methods include:

(1) **Micro-purchases** —

(i) **Distribution.** The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold defined in [§ 200.1](#). To the extent practicable, the recipient or subrecipient should distribute micro-purchases equitably among qualified suppliers.

(ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the recipient or subrecipient considers the price reasonable based on research, experience, purchase history, or other information; and maintains documents to support its conclusion. Purchase cards may be used as a method of payment for micro-purchases.

(iii) **Micro-purchase thresholds.** The recipient or subrecipient is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the recipient or subrecipient must be authorized or not prohibited under State, local, or tribal laws or regulations. The recipient or subrecipient may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs \(a\)\(1\)\(iv\) and \(v\)](#) of this section.

(iv) **Recipient or subrecipient increase to the micro-purchase threshold up to \$50,000.** The recipient or subrecipient may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The recipient or subrecipient may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal agency or pass-through entity and auditors in accordance with [§ 200.334](#). The self-certification must include a justification, clear identification 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 [§ 200.520](#) for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

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

(v) **Recipient or subrecipient increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The recipient or subrecipient must submit a request that includes the requirements in [paragraph \(a\)\(1\)\(iv\)](#) of this section. The increased threshold is valid until any factor that was relied on in the establishment and rationale of the threshold changes.

(2) **Simplified acquisitions** —

(i) **Simplified acquisition procedures.** The aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate.

(ii) **Simplified acquisition thresholds.** The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures, which may be lower than, but must not exceed, the threshold established in the FAR.

(b) **Formal procurement methods.** Formal procurement methods are required when the value of the procurement transaction under a Federal award exceeds the simplified acquisition threshold of the recipient or subrecipient. Formal procurement methods are competitive and require public notice. The following formal methods of procurement are used for procurement transactions above the simplified acquisition threshold determined by the recipient or subrecipient in accordance with [paragraph \(a\)\(2\)\(ii\)](#) of this section:

(1) **Sealed bids.** This is a procurement method in which bids are publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. The sealed bids procurement method is preferred for procuring construction services.

(i) For sealed bidding to be feasible, the following conditions should be present:

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

(B) Two or more responsible bidders have been identified as willing and able to compete effectively for the business; and

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

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

(A) Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate. For local governments, the invitation for bids must be publicly advertised.

(B) The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids. For local governments, the bids must be opened publicly.

(D) A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.

(E) The recipient or subrecipient must document and provide a justification for all bids it rejects.

(2) **Proposals.** This is a procurement method used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-

reimbursement contract. They are awarded in accordance with the following requirements:

(i) Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.

(ii) The recipient or subrecipient must have written procedures for conducting technical evaluations and making selections.

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors; and

(iv) The recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

(c) **Noncompetitive procurement.** There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method. The noncompetitive procurement method may only be used if one of the following circumstances applies:

(1) The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see [paragraph \(a\)\(1\)](#) of this section);

(2) The procurement transaction can only be fulfilled by a single source;

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

(4) The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or

(5) After soliciting several sources, competition is determined inadequate.

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

(a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.

(b) Such consideration means:

(1) These business types are included on solicitation lists;

(2) These business types are solicited whenever they are deemed eligible as potential sources;

(3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;

(4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;

(5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring a contractor under a Federal award to apply this section to subcontracts.

**§200.323 Procurement of recovered materials.**

(a) A recipient or subrecipient 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 of 1976 as amended, [42 U.S.C. 6962](#). The requirements of Section 6002 include procuring only items designated in the 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.

(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished,

or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

#### **§200.324 Contract cost and price.**

(a) The recipient or subrecipient must perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the recipient or subrecipient must make independent estimates before receiving bids or proposals.

(b) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable for the recipient or subrecipient under [subpart E of this part](#). The recipient or subrecipient may reference its own cost principles as long as they comply with [subpart E of this part](#).

(c) The recipient or subrecipient must not use the “cost plus a percentage of cost” and “percentage of construction costs” methods of contracting.

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

(a) The Federal agency or pass-through entity may review the technical specifications of proposed procurements under the Federal award if the Federal agency or pass-through entity believes the review is needed to ensure that the item or service specified is the one being proposed for acquisition. The recipient or subrecipient must submit the technical specifications of proposed procurements when requested by the Federal agency or pass-through entity. This review should take place prior to the time the specifications are incorporated into a solicitation document. When the recipient or subrecipient desires to accomplish the review after a solicitation has been developed, the Federal agency or pass-through entity may still review the specifications. In those cases, the review should be limited to the technical aspects of the proposed purchase.

(b) When requested, the recipient or subrecipient must provide procurement documents (such as requests for proposals, invitations for bids, or independent cost estimates) to the Federal agency or pass-through entity for pre-procurement review. The Federal agency or pass-through entity may conduct a pre-procurement review when:

(1) The recipient's or subrecipient'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 is expected to be received in response to a solicitation;

(3) The procurement is expected to exceed the simplified acquisition threshold and specifies a "brand name" product;

(4) The procurement is expected to exceed the simplified acquisition threshold, and a sealed bid procurement is to be awarded to an entity other than the apparent low bidder; 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 recipient or subrecipient is exempt from the pre-procurement review in [paragraph \(b\)](#) of this section if the Federal agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The recipient or subrecipient may request that the Federal agency or pass-through entity review its procurement system to determine whether it meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding and third-party contracts are awarded regularly.

(2) The recipient or subrecipient may self-certify its procurement system. However, self-certification does not limit the Federal agency's or pass-through entity's right to review the system. Under a self-certification procedure, the Federal agency or pass-through entity may rely on written assurances from the recipient or subrecipient that it is complying with the standards of this part. The recipient or subrecipient must cite specific policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.

### **S200.326 Bonding requirements.**

The Federal agency or pass-through entity may accept the recipient's or subrecipient's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold. Before doing so, the Federal agency or pass-through entity must determine 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 any required contractual documents within the specified timeframe.

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

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

**§200.327 Contract provisions.**

The recipient's or subrecipient's contracts must contain the applicable provisions described in [Appendix II of this part](#).

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