**Writing a Procurement Policy: Assessing Your Organization’s Needs**

Federal regulations 2 CFR Part 200 require that all Sponsors of federally funded child nutrition programs maintain two procurement documents: (1) a **written code of conduct** and (2) **procurement procedures**.

**To write an effective procurement policy, Sponsors must determine which procurement situations are applicable to its specific procurement activities.**

Sponsors should use the checklist beginning on the next page to assess their organization’s needs in regards to a procurement policy and written code of conduct.

**Instructions:**

* Determine whether each component in the checklist is applicable to your agency’s specific procurement activities.
* If your agency has an existing written code of conduct and procurement procedures, cross-reference the checklist with your agency’s procurement documents to ensure that all of the applicable components are included. Document where each component is addressed in your policy by noting the page and paragraph number in the appropriate columns of the checklist.
* If your agency does not have a written code of conduct and procurement procedures, refer to the checklist to help your agency develop the required procurement documents. Indicate where each component is addressed in the policies that you develop by noting the page and paragraph number in the appropriate columns of the checklist.
* Remember, not all components may apply to your agency. If you are unsure whether your agency needs to include a component in the required written procurement documents, please contact your agency’s procurement specialist or legal department.
* Agencies must retain their written code of conduct and procurement procedures and have them available upon request by RIDE.

**Procurement Policies Checklist**

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| --- | --- |
| **Code of Conduct Components** | **Is this Applicable to my Agency?** |
| **1. Code of Conduct (2 *CFR*, sections 200.318[c][1] and 400.2):** Develop a code of conduct that addresses conflicts of interest and regulates the actions of employees engaged in the selection, award, and administration of contracts. The code of conduct should ensure that employees, officers, or agents do not participate in the selection, award, or administration of a contract supported by a federal award if they have a real or apparent conflict of interest. The written code of conduct must define a conflict of interest and include disciplinary action for violations. | **Required for all Agencies** |
| **2. Gratuities, Favors, or Gifts (2 *CFR*, sections 200.318[c][1] and 400.2):** Include a prohibition on soliciting or accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Agencies may define a set of standards for situations in which financial interest or gratuity is not substantial or the gift is an unsolicited item of nominal value. If the latter is chosen, include the definition of **nominal value**. | **Required for all Agencies** |
| **3. Organizational Conflicts of Interest (2 *CFR*, Section 200.318[c][2]):** If your agency has a parent, affiliate or subsidiary and your agency is not a state, local government or Indian tribe, include how your agency will manage relationships that may prohibit the ability to be impartial in conducting a procurement action involving a related organization.  | **Yes** | **No** |
| Procurement Procedures Components | **Is this Applicable to my Agency?** |
| **1. Authorization Title Page:** Include the date the procedures are effective, the name, title, and signature of the authorized representative, and the date it is signed. | **Recommended for all Agencies** |
| **2. Surplus Property (2 *CFR*, Section 200.318 [f]):** Identify whether the agency would consider purchasing government surplus property in lieu of purchasing new equipment. If so, include the process for conducting this type of procurement. | **Yes** | **No** |
| **3. Duplication of Goods/Services (2 *CFR*, Section 200.318[d]):** Describe the process used to ensure that there is no acquisition of unnecessary or duplicate goods or services. | **Required for all Agencies** |
| **4. Small and Minority Businesses, Women Business Enterprises, and Labor Surplus Area Firms (2 *CFR*, Section 200.321):** Describe the affirmative process to ensure that minority businesses, women business enterprises, and labor surplus area firms are used when possible. | **Required for all Agencies** |
| **5. Maintenance of Records (2 CFR, Section 200.318[i]):** Describe the process for ensuring that records are maintained to detail the history of procurement. The records will include, but are not limited to: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. Records should be maintained for the duration of the contract, including all extensions, plus three years; or longer if required for audits.  | **Required for all Agencies** |
| **6. Competition** (**2 CFR 200.319(a)):** Describe how procurement practices ensure free and open competition. | **Required for all Agencies** |
| **7. Methods of Procurement (2 CFR 200.320(a) – (b)):** Describe the methods of procurement to be followed, their thresholds, and the process for ensuring all required Federal steps are taken. Federal methods of procurement include micro purchase, small purchase, formal purchase and noncompetitive procurement. | **Required for all Agencies** |
| **8. Buy American (7 CFR210.21(d)):** Describe the process used to ensure that commercial food products purchased to be served in the Federally funded child nutrition products are domestic commodities or products. Describe the process used to ensure that all solicitations and contracts include the required Buy American certification language. | **Required for School Nutrition Program Operators (National School Lunch Program/School Breakfast Program)** |
| **9. Contractor Oversight (2 CFR 200.318(b)):** Describe the process used to maintain oversight to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders. | **Required for all Agencies** |
| **10. Responsible Contracts (2 CFR 200.318(h)):** Describe the process for ensuring that contracts are awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of the contract and that potential contractors are not on the System for Award Management’s list of suspended and debarred contractors. | **Required for all Agencies** |
| **11. Contractual and Administrative Issues (2 CFR 200.318(k)):** Describe the process for ensuring that the entity (alone) is responsible for the settlement of all contractual and administrative issues arising out of procurements (i.e., protests, disputes, claims, etc.) | **Required for all Agencies** |
| **12. Contract Cost and Price (2 CFR 200.324):** Describe the process for ensuring that a cost or price analysis is performed in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. | **Required for all Agencies** |

**Sample Procurement Policy**

**CHILD NUTRITION PROGRAMS**

**PROCUREMENT PLAN**

This procurement plan will be implemented on Date forward or until amended. All procurements must adhere to free and open competition. Sponsors must retain all documentation for each procurement per regulations.

Sponsor Name:

Print Authorized Representative's Name

Authorized Representative's Signature\* Date

\*By signing this report, I certify to the best of my knowledge and believe that the report is true, complete and accurate and the expenditures, disbursement and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. I am aware that my false, fictitious, or fraudulent information of the omission of any material fact, may subject me to criminal civil or administrative penalties for fraud, false statements, false claims, or otherwise.

**PROCUREMENT PLAN**

The Name of Sponsor will purchase goods, products, and/or services for use in the Child Nutrition Programs (CNP) in compliance with 2 CFR Part 200, program specific regulations (CACFP, NSLP, SFSP, as applicable), and State Law, using the procedures outlined as follows.

The primary purpose of this procurement plan is to assure that open and free competition exists to the maximum extent possible. The procurement processes practiced by the Sponsor must not restrict or eliminate competition. For example, description of goods, products, and/or services to be procured should not contain features that unduly restrict competition. Competition helps assure that goods, products, and/or services will be obtained that best meets your needs. In addition to ensuring free and open competition, this procurement plan is designed to eliminate and avoid acquisition of unnecessary and duplicative items.

An annual review of this plan will be conducted by Title of the Person to assure its relevance to current procedures.

The Title of the Person is responsible for ensuring that contracts are awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement in accordance with 2 CFR 200.318(h)). Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The Title of Person will verify no awards, subawards, and contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in the Federal assistance programs or activities in accordance with 2 CFR 200.213.

The Title Person will ensure that contracts contain the applicable provisions described in Appendix II to 2 CFR 200 and 7 CFR 210.21 in accordance with 2 CFR 200.326.

The Title of Person is responsible for maintaining oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders in accordance with 2 CFR 200.318(b).

The Name of Sponsor 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 local, State, or Federal authority having proper jurisdiction. (2 CFR 200.318).

**Procurement Methods**

The methods for procuring goods and services as outlined in this plan must be approved by Title of the Person and/or Title of the Person responsible for purchasing activity. Name of Sponsor shall choose the procurement method most aligned with how goods and/or services are purchased according to the procedures below:

1. **Informal purchase procedures**.

**Micro purchase procedures**. This method applies to the purchase of supplies or services when the aggregate dollar amount does not exceed $10,000. These purchases may be awarded without soliciting competitive quotes if the entity considers the price reasonable based on research, experience, purchase history or other information and documents its files accordingly. To the maximum extent practicable, purchases should be spread equitably among qualified vendors.

**Small purchase procedures.** This method applies to purchases of goods, products, and/or services when the aggregate dollar amount is less than $250,000. Quotes from at least three (3) qualified vendors/contractors will be required.

* Written specifications will be developed; the same information needs to be provided to all vendors/contractors. Prices may be found online, in catalogs, sale flyers, newspapers, prices obtained from grocery stores, farmer’s markets, and etc.
* Each vendor/contractor will be contacted and given an opportunity to provide a price quote on the same specifications.
* The Title of Person will be responsible for contacting potential vendors/contractors when price quotes are needed.
* The price quotes are to remain confidential information until the actual purchase has been made.
* Vendors will be awarded by Title of Person. Vendors awarded will be to the lowest and best quote based upon price, quality, and service availability.
* The Title of Person will be responsible for documentation of records to show selection of vendor/contractor, reasons for selection, names of all vendors/contractors contacted, price quotes from each vendor/contractor, and written specifications.

B. **Formal purchase procedures.** This method applies to purchases of supplies or services when the aggregate cost amount is more than either the Federal Simplified Acquisition Threshold of $250,000, or the Sponsor’s Simplified Acquisition Threshold, whichever is more restrictive. Name of Sponsoring Organization uses the (Choose 1) Federal Acquisition Threshold of $250,000 OR the Sponsor’s Simplified Acquisition Threshold of (enter amount). The formal procurement method requires the use of an Invitation for Bid (IFB) or a Request for Proposal (RFP).

* The Title of Person is the Sponsor’s authorized purchaser.
* A cost or price analysis will be performed by Title of Person in connection with every procurement in excess of the Simplified Acquisition Threshold. The method and degree of the analysis will be dependent on the facts surrounding the particular procurement situation, but as a starting point, independent estimates will be made before receiving bids or proposals.
* An announcement of an **Invitation for Bid** ***(IFB) or a Request for Proposal (RFP)*** will be placed in the Newspaper/media, Website, other internet source to publicize the intent of the Sponsor to purchase needed items. The advertisement for bids/proposals or legal notice will be run for Length of Time.
* An advertisement is required for all purchases over the Sponsor’s simplified acquisition threshold of actual amount of the SPONSOR’s simplified acquisition threshold. The announcement (advertisement or legal notice) will contain a general description of items to be purchased, the deadline for submission of sealed IFB’s and RFP’s and the address where complete specifications and other procurement documents may be obtained.
* Each vendor/contractor will be given an opportunity to bid on the same specifications.
* The developer of written specifications or descriptions for procurements will be prohibited from submitting bids or proposals for such products or services.
* The Title of Person will be responsible for securing all IFB or RFP.
* The Title of Person will be responsible to ensure all Sponsor procurements are conducted in compliance with applicable Federal regulations, State General Statutes or policies of the Sponsor. The federal regulations outlined in 2 CFR 200 as well as any program specific regulations will be followed to ensure that all required processes and contract provisions are included as part of this procurement.
* In awarding a competitive negotiation (RFP), a set of award criterion in the form of a weighted evaluation sheet will be provided to each bidder in the initial bid document materials. Price alone is not the sole basis for award, but remains the primary consideration when awarding a contract. Following evaluation and negotiations a firm fixed price or cost reimbursable contract is awarded.
* The contracts will be awarded to the responsible bidder/proposer whose bid or proposal is responsive to the invitation and best meets the needs of the Sponsor, price, and other factors considered. Any and all bids or proposals may be rejected in accordance with law.
* The Title of Person will be responsible for maintaining all documentation of the procurement process.

C. **Sole source.** If items are available only from a single source (aka Sole Source) when *the award of a contract is not feasible under simplified acquisition purchase, IFB or RFP* Non-competitive Negotiation procedures will be used:

* Written specifications will be prepared and provided to the vendor/contractor.
* The Title of Person will be responsible for the documentation of records to fully explain the decision to use the non-competitive negotiation. The records will be available for audit and review. The record of non-competitive purchases shall include, at a minimum, the following:

a. Item name

b. Dollar amount

c. Vendor/contractor, and

d. Reason for non-competitive procurement

* The Title of Person will be responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive negotiation are met.

D. **Emergency purchases.** If it is necessary to make an emergency procurement to continue service, the purchase shall be made, and a log of all such purchases shall be maintained by the Title of Person. All emergency procurements shall be approved by the Title of Person. At a minimum, the following emergency procurement procedures shall be documented:

a. Item name

b. Dollar amount

c. Vendor/contractor, and

d. Reason for emergency

E. **School Food Authority (SFA) purchases.** Name of Sponsor may enter into a written agreement with an existing School Food Authority (SFA) to provide vended meals, when possible. Under this method of procurement a competitive bid process is not required, however, the parties must enter into a formal agreement that has been approved by RIDE and this agreement must be renewed annually.

Based on the above purchasing methods, Sponsor name plans to conduct the following procurements:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Products and/or Services | Sources of Purchases | Frequency/Duration | Purchasing Procedures (micro-purchase, small purchase, formal) | Contract Management |
| **Who Receives and Confirms Products as Ordered; Notes Exceptions** | **Who confirms Products & Prices, Adjusts for Exceptions, Enters into Payment System** |
| *Examples* | *Vended Meals (lunch)* | *ABC Catering* | *Annual* | *Small Purchase* | *Cook, Director* | *Director* |
| *Bulk food items, supplies* | *ABC Wholesale Foods* | *Bi-weekly* | *Small Purchase* | *Director, Cook*  | *Director* |
| *Fresh Product, Infant Foods* | *Dollar Store, XYZ Mart, ABC Grocery* | *Weekly* | *Micro-Purchase* | *Cook, assistant Cook* | *Business Manager* |
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**Small/Minority Businesses & Women Owned Businesses**

The following steps will be taken when conducting purchasing activities supported by Child Nutrition Program Funds:

* Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
* Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
* Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
* Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
* 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
* Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**Buy American**

When purchasing commercial food products to be served in the Federally funded child nutrition programs, Sponsor name shall ensure that, to the maximum extent practicable, all items purchased are domestic commodities or products. For all procurement transactions for food when funds are used from the nonprofit food service account, whether directly by Sponsor name or on its behalf, procurement transactions will comply with the Buy American provision of Federal regulations, found at 7 CFR 210.21(d), by including domestic requirements in all procurement solicitations and contracts.

 A “domestic product” is defined as an agricultural commodity or product that is produced or processed in the United States (U.S.) (including Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands), using substantial agricultural commodities that are domestic. “Substantial” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

**Limited exceptions to the Buy American provision.** There are limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the “domestic” standard as described above (i.e., “non-domestic”) in circumstances when use of domestic foods is truly not practicable. These exceptions, as determined by the Title of Person, are:

• The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or

• Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

**Compliance with, and monitoring of, the Buy American provision.** To ensure compliance with the Buy American provision Sponsor name will ensure solicitation and contract language includes the requirement for domestic agricultural commodities and products. Sponsor name will retain records documenting any exceptions to the Buy American Provision.

Solicitation and contract language will be monitored by the Title of Person to determine contractor compliance as required by **2 CFR 200.318(b)**, in order to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Title of Person will conduct a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses to ensure the products received are the ones solicited, and awarded, and comply with the Buy American provision.

**Conflicts of Interest**

The following conduct will be expected of all persons who are engaged in the awarding and administration of contracts supported by Child Nutrition Program Funds.

* No employee, officer or agent of Sponsor name shall participate in the selection, award or administration of a contract supported by program funds if a conflict of interest, real or apparent, is present.
* Conflicts of interest arise when one of the following has a financial or other interest in the firm selected for the award:

a. The employee, officer or agent;

b. Any member of the immediate family;

c. His or her partner, spouse or significant other;

d. An organization which employs or is about to employ one of the above;

* Conflicts of interest can also arise when a transaction is less-than-arms-length. A less-than-arms-length transaction is one party’s ability to control or influence the other party to the transaction. A less-than-arms-length transaction occurs:
1. When a transaction is conducted between related parties, meaning that the integrity of the transaction could be compromised;
2. When one party to the transaction is able to control or influence the actions of the other party.

Examples could include:

1. Hiring the CEO’s brother as a janitor.

2. Purchasing goods or services from a business owned by an officer, employee, or relative of the Sponsor’s entity.

3. Agreement for computer maintenance between a business and person(s) who are related to the Sponsor’s employees or board members.

**Code of Conduct**

* The Sponsor, employees, officers oragents must not solicit gifts, travel packages, gratuities, favors or other incentives from prospective vendors/contractors
* The Sponsor must set standards when financial interest is not substantial or the gift is an unsolicited item of nominal value and may be acceptable.
* Penalties for violation of the code of conduct of Sponsor name will be the following actions: (list appropriate actions for your organization).

a.

b.

c.

All procurement activities engaged in by the agency, using federal funds to support the agency’s child nutrition program will be subject and adhere to the procurement procedures as outlined in this plan.