

Winston County Board of Education

Child Nutrition Program

Procurement Plan

SECTION I – PROCUREMENT PLAN GENERAL REQUIREMENTS

The Winston County Board of Education plan for procuring items for use in the Child Nutrition Program is as follows:

1. The procurement plan provides for free and open competition, transparency in transactions, comparability, and documentation of all procurement activities.
2. BUY AMERICAN STATEMENT
It is the intent of the Winston County Board of Education to strictly adhere to the USDA’s “Buy American” Provision. The District participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A domestic commodity or product is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d). Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved upon request. To be considered for an alternative or exception, the request must be submitted in writing to the CNP Coordinator, a minimum of 3 days in advance of delivery. The request must include the:

- (1) Reason for exception: limited/lack of availability or price (include price):
 - (a) Price of the domestic food product; and
 - (b) Price of the non-domestic product that meets the required specifications of the domestic product.

Vendors should provide market news reports from AMS to document requested exceptions.

3. The following **Code of Conduct** will be expected of all persons who are engaged in the awarding and administration of contracts supported by the Child Nutrition reimbursement funds. These written standards of conduct include:
 - a) Conflicts of Interest
 - 1) No employee, officer, or agent shall purchase or establish a contract if a conflict of interest, real or apparent, would be involved.
 - 2) Conflicts of interest arise when one of the following has a financial or other interest in the firm selected for the award.
 - i. The employee, officer, or agent.
 - ii. Any member of the immediate family
 - iii. His or her partner
 - iv. An organization that employs or is about to employ one of the above

b) Disciplinary Action

1) Penalties for violation of the standards of Code of Conduct may include any of the following:

- i. Reprimand by the Board of Education
- ii. Dismissal by the Board of Education
- iii. Any legal action necessary

c) Gratuities, Favors, and Gifts

- 1) Employees, offices or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements.
- 2) Staff are allowed to except gifts of de minimus value as defined by the Alabama Ethics Law such as promotional items commonly distributed to the general public.

4. Regardless of procurement method, the following factors will be determined regarding the allowability of costs:

- a. Be necessary and reasonable for proper and efficient administration of the program(s)
- b. Be allocable to federal awards applicable to the administration of the program(s)
- c. Be authorized and not prohibited under state and local laws

5. Purchasing will be conducted at the most restrictive procurement threshold:

	Federal Procurement Thresholds	School Food Authority (SFA)/ State Procurement Thresholds
Micro-purchasing	\$0 - \$50,000	\$0 - \$10,000
Equipment	Over \$5,000	Over \$5,000
Small/Informal	\$10,001 - \$250,000	\$10,001 - \$15,000
Formal	\$250,000 +	\$15,000 +

6. All staff conducting purchasing will be trained on the procurement procedures.

7. All purchasing records will be maintained no less than the current year plus 3 additional years.

8. The SFA takes necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. It is the intent of the Winston County Board of Education to provide maximum practicable opportunities in its solicitations to minority firms, women's business enterprises, and labor surplus area firms.

9. All bids / contracts must contain provisions covering the following, as applicable:
- Address terms of termination for cause and for convenience and the manner by which it will be affected and the basis for settlement.
 - Bid / contracts in excess of \$15,000 contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the following:
 - Clean Air Act (42 U.S.C. 7401-7671q)
 - Federal Water Pollution Control Act as amended (22 U.S.C. 1251-1387)
 - Buy American provision (7 CFR §210.21)
 - Equal Employment Opportunity (41 CFR §60)
 - Davis-Bacon Act (40 U.S.C. 3141-3148)
 - Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
 - Rights to Inventions Made Under a Contract or Agreement (37 CFR §401.2)
 - Debarment and Suspension (Executive Orders 12549 and 12689)
 - Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
 - Procurement of Recovered Materials (See §200.322)
 - Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)
- The bid documents utilized will address required Federal, State, and Local provisions/requirements when applicable.

SECTION II – MICRO PURCHASING

If the annual amount of purchases for like items is less than \$10,000 and less than the SFA/Sponsor's small purchase threshold, the following procedure will be used.

1. Purchases will not be separated into 2 or more purchases to meet or be below the \$10,000 threshold.
2. The price quotes will not be required. Competition is not required.
3. When practicable, micro-purchases should be distributed equitably among qualified suppliers.
4. Documentation of purchases will be kept and maintained for 3 years plus the current year.
5. The CNP Director/Designee will be responsible for documentation of purchases.

NOTE: Federal threshold of \$2,000 is applicable in the case of acquisitions for construction subject to the Davis-Bacon Act.

SECTION III – PURCHASING CAPITAL EQUIPMENT

If the annual amount of like purchases for piece of equipment is greater than \$5,000, the following procedure will be used.

1. Written specifications will be prepared and provided to vendors.
2. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of three vendors should be contacted.
3. The price quotes will receive appropriate confidentiality before award.
4. If using USDA funding for the purchase, the Winston County Board of Education will ensure approval from the Alabama Child Nutrition Program if the equipment is not identified as part of the “The CNP Capital Equipment Pre-Approved List”.
5. Quotes will be awarded by the CNP Director/Designee and will be awarded to the lowest and best quote based upon quality, service availability, and price.
6. The CNP Director/Designee will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications.
7. The CNP Director will be responsible for documentation that the actual product specified is received.

NOTE: Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, of \$5,000.

SECTION IV – SMALL PROCUREMENT (QUOTE)

If the annual amount of purchases for like items is greater than \$10,000 and less than \$15,000 the following procedure will be used.

1. Written specifications will be prepared and provided to the vendor.
2. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of three vendors should be contacted. Price and rate quotations will be obtained from an adequate number of qualified sources.
3. The CNP Director/Designee will be responsible for contacting potential vendors when price quotes are needed.
4. The price quotes will receive appropriate confidentiality before award.
5. Quotes will be awarded by the CNP Director and will be awarded to the lowest and best quote based upon quality, service availability, and price.
6. The CNP Director/Designee will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications.
7. The CNP Director/Designee will be responsible for documentation that the actual product specified is received.
8. Any time an accepted item is not available, the CNP Director will select the acceptable alternate. Full documentation will be made available as to the selection of the acceptable item. Substituted items will not be made at the vendors' discretion.
9. Purchasing will be based on the following criteria:
 - a) Price
 - b) Quality
 - c) Service Availability

SECTION V – FORMAL PROCUREMENT (BID)

1. If the amount of purchases is \$15,000 or greater, a formal procurement will be used.
2. The Child Nutrition Department may utilize a purchasing cooperative contract with a qualified agency.
3. CNP formal bid procedures will be applied on the basis of: **EXAMPLE BELOW**

Category	Procurement Method	Evaluation Used	Contract Award Type	Contract Duration/Frequency
Frozen Foods	Formal/State Bid	Lowest Cost	Fixed Price	
Canned Foods	Formal/State Bid	Lowest Cost	Fixed Price	
Fresh Produce	Formal	Lowest Cost	Fixed Price and cost plus for unlisted items	
Chemicals	Formal/PACA	Lowest Cost	Fixed Price	
Bread	Formal/PACA	Lowest Cost	Fixed Price	
Milk and Dairy	Formal/PACA	Lowest Cost	Fixed Price with Escalator/ De-Escalator Clause (Market-Based Pricing)	
Office Supplies	Formal/State Bid	Lowest Cost	Fixed Price	
Ice Cream	Formal/PACA	Lowest Cost	Fixed Price	
Other Grocery Items	Formal/PCA	Lowest Cost	Fixed Price with Escalator / De-Escalator Clause OR Cost Plus	

4. Because of the potential for purchasing more than \$15,000, it will be the responsibility of the CNP Coordinator/Designee to document the amounts to be purchased so the correct method of procurement will be followed
5. Cost plus contracts are time consuming for the vendor and SFA, for this reason a fixed cost bid with an escalation/de-escalation clause for Other Grocery Items is preferred; however, it may be necessary to utilize a cost-plus contract in order to provide meals for students due to lack of vendor responsiveness. If a cost-plus contract is utilized, the vendor must provide a current cost of products ordered, a percentage rate of the markup, the formula detailing how markup percentage is used to calculate the selling price, and the selling price. This information will allow a Winston County BOE employee to confirm correct pricing.
6. If Winston County Schools must award a cost plus bid rather than a fixed cost bid with an escalation/de-escalation clause, the bid document will require that the vendor provide the current cost of each item that will be provided, the percentage rate of the markup, and the formula utilized to calculate the selling price, and the selling price. This information will be utilized to confirm that the bid is awarded to the vendor with the lowest cost.

When a formal procurement method is required, the following COMPETITIVE SEALED BID or an INVITATION FOR BID (IFB).

- An announcement of an Invitation for Bid (IFB) will be placed on the Winston County Board of Education website and posted on the bulletin board at the Winston County BOE Central Office to publicize the intent to purchase needed items.
- Contract period
- SFA/Sponsor is responsible for all contracts awarded (statement)
- Date, time, and location of bid opening
- How vendor is to be informed of bid acceptance or rejection
- Delivery schedule
- Set forth requirements (terms and conditions) which bidder must fulfill in order for bid to be evaluated
- Benefits to be entitled if the vendor cannot or will not perform as required
- Statement assuring positive efforts will be made to involve minority and small business
- Statement regarding the return of purchase incentives, discounts, rebates, and credits to the non-profit Child Nutrition account
- Procuring instrument to be used are purchase orders from firm fixed process after formal bidding
- Price adjustment clause (escalation/de-escalation) based on appropriate standard or cost index (Consumer price index, or other as stated in terms and conditions for pricing and price adjustments)
- Method of evaluation and type of contract to be awarded
- Method of award announcement and effective date (if intent to award is required by State and local procurement requirements)
- Specific bid protest procedures including contact information of person and address and the date by which a written protest must be received
- Provision requiring access by duly authorized representatives of the SFA/Sponsor, State Agency, United State Department of Agriculture, or Comptroller General to any books, documents, papers and records of the vendor which are directly pertinent to all negotiated contracts
- Method of shipment or delivery upon contract award
- Provision requiring vendor to maintain all required records for three years after final payment and all other pending matters (audits) are closed for all negotiated contracts
- Description of process for enabling vendors to receive or pick up orders upon contract award

- Provision requiring the vendor to recognize mandatory standards/policies related to energy efficiency contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act
- Signed statement of non-collusion
- Signed Debarment/Suspension Certificate or statement included in contract or copy of Excluded Parties List System (EPLS)
- Specifications and estimated quantities of products and service prepared by SFA/Sponsor and provided to potential vendors desiring to submit bids/proposals for the products or services requested
- If any potential vendor is in doubt as to the true meaning of specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the CNP Director.
- The CNP Director will be responsible for securing all bids or proposals
- The CNP Director will be responsible to ensure all SFA/Sponsor procurements are conducted in compliance with applicable Federal, State, and local procurement regulations
- The following criteria will be used in awarding contracts as a result of bids/proposals
 - ✓ Price
 - ✓ Quality
 - ✓ Service Availability

SECTION VII – EMERGENCY PURCHASING

1. If it is necessary to make a one-time emergency procurement to continue service or obtain goods, the purchase shall be made, and a log of all such purchases shall be maintained by the CNP Director/Designee. The following emergency procedures shall be followed. All emergency procurements shall be approved by the Winston County Board of Education. At a minimum, the following emergency procurement procedures shall be documented:

- Item name
- Dollar amount
- Vendor; and
- Reason for emergency

2. If the emergency purchasing need requires a contract, all books, records and other documents relative to the award of the contract must be retained for three (3) years after final payment. Specifically the SFA/Sponsor shall maintain, at a minimum, the following documents:

- Written rationale for the method of procurement
- A copy of the original solicitation
- The selection of contract type
- The basis for vendor selection
- The basis for award cost or price
- The terms and conditions of the contract
- Billing and payment records
- A history of any vendor claims
- A history of any vendor breaches

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*The enclosed "non discrimination" language herein was added pursuant to the May 5, 2022, USDA memorandum. However, although included as currently required for audit compliance by the USDA, the State of Alabama objects to its inclusion, applicability and the application of this language due to currently pending legal challenges in the matter of THE STATE OF TENNESSEE, ET AL. V. USDA, ET AL., Case No. 3:22-cv-00257, and may be subject to change or removal.

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