PROCUREMENT PROCEDURES

A. Allowable / Unallowable

Procurement Practices

The purpose of Federal procurement requirements is to provide a system where maximum open and free competition allows a purchaser to acquire the goods and services needed at the best possible price. It is not the purpose of Federal procurement rules to require child nutrition program operators to purchase sub-standard goods simply because the price is lowest; nor is it the purpose of Federal procurement rules to permit unreliable suppliers access to the child nutrition programs simply because these suppliers underbid reliable companies.

Allowable Procurement Practices:

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

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

Unallowable Procurement Practices:

1. Allowing a potential contractor to write the bid or proposal terms, product specifications, and procurement procedures or contract terms.
2. Allowing a potential contractor to evaluate bids or proposals submitted by competitors.
3. Delegating bid/proposal acceptance or recommendation for acceptance to a potential contractor competing on the procurement.
4. Allowing a potential contractor access to sealed bid information before the bids are publicly opened.
5. Disclosing the content of proposal offers submitted by others to a potential supplier prior to the supplier submitting an offer.
6. Negotiating under the formal advertising method (sealed bid) of procurement.
7. Accepting non-responsive bids or offers.

For additional information on USDA procurement requirements see 7 CFR 210.21; Title 7 Code of Federal Regulations (CFR) 2 CFR 200. These may be found on the bureau website at https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/procurement-cfr.pdf

Buy American

USDA requires that whenever possible, School Food Authorities shall only purchase food products that are produced in the United States. Exceptions to the **"Buy American"** requirement are allowed when:

- The recipients have unusual or ethnic food preferences that can only be met through purchases of products not produced in the United States,
  - Products are not produced or manufactured in the United States in sufficient and reasonable available quantities of a satisfactory quality.
  - The cost of the domestic produced food products is significantly higher than that of foreign products.
  - Documentation of ALL exceptions must be maintained.

B. Debarment and Suspension/Lobbying

School districts participating in NSLP are prohibited from contracting with a company or individual that has been debarred or suspended in accordance with 2 CFR 200.450. This prohibition applies to new contracts and extensions or renewals of existing contracts of $100,000 or more and to contracts for audit services, regardless of amount. A

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" must be filed with all bids of $25,000 or more. See 2 CFR 200.450 for Lobbying Certification for Contracts of $25,000 or more.

C. **Exclusive Beverage and Snack Contracts**

If the Child Nutrition Program is included in exclusive beverage contracts, all federal procurement requirements must be met. **Copies of the contract and procurement documentation must be available for review.** Federal procurement procedures are found in 7 CFR 210.21 and 2 CFR 200.

These regulations require: "All procurement transactions... without regard to dollar value shall be conducted in a manner that provides maximum open and free competition." Documentation must be maintained to prove that the appropriate procurement procedures were used and that the final selection is the most efficient and economical for the Child Nutrition programs.

There are several other very specific requirements in the regulations based on the method selected to procure products. If a district includes Child Nutrition programs in an exclusive beverage contract, and the district does not have copies of 7 CFR 210.21, or 2 CFR 200, please contact this office.

If the exclusive beverage contract does not include the federal Child Nutrition programs, the contract does not have to comply with the USDA procurement regulations cited above, but it must still comply with the appropriate state procurement requirements.

D. **Procurement Process**

The following are additional excerpts from 7 CFR Part 3016 and 2 CFR 200, which must be followed during the procurement process.

- **Code of Conduct**

  2 CFR 200.318 (c) (1) A School Food Authority (local school district) **must maintain** a written standards of conduct governing the performance of their (SFA) employees engaged in the award and administration of the contract. No employee ...shall participate in selection or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent would be involved.

  2 CFR 200.318 (c) (1) regulations state employees will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties.

- **Non-geographic Preference**

  2 CFR 200.319(b) A School Food Authority (local school district) will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals.

- **Selection Procedures**

  2 CFR 200.320 (c) (1) (i) the request for proposal (RFP) or invitation to bid shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features, which unduly restrict competition.

  2 CFR 200.320 (d) (1) the RFP or invitation to bid shall Identify all requirements which offerors (vendors) must fulfill and all other factors to be used in evaluating bids or proposals.

- **Access to Contractor Records**

  2 CFR 200.336 (a) access by the grantee (state agency), the Federal grantor agency (USDA), the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

  2 CFR 200.333 regulations require retention of all required records for three years after ... the final payments and all other pending matters are closed.

CFDA #:
10.555 National School Lunch Program
10.553 School Breakfast Program
10.556 Special Milk Program

SAU# 26
PROCUREMENT PROCEDURES

Section A

1. SAU #26's plan for procuring items for use in the Child Nutrition Program is as follows. The procurement procedures maximize full and open competition, transparency in transactions, comparability, and documentation of all procurement activities.

2. If the amount of purchases is more than the Federal small purchase threshold currently valued at $150,000 or the School Food Authority's (SFA) approved threshold, if less, formal procurement procedures will be used as required by 2 CFR200.318-326. Informal procurement procedures (small purchase) will be required for purchases under the most restrictive small purchase threshold.

3. The following procedures will be used for all other purchases:

4. Formal bid procedures will be applied on the basis of:

Category	Procurement Method	Evaluation Used	Contract Award Type	Contract Duration/Frequency
All perishable and non-perishable foods and Manual All Purpose Cleaning Supplies, Paper and Plastic Supplies	Formal	Bottom Line	Cost-reimbursable plus fixed fee	July 1-June 30, Biannual
Dish Machine Chemicals	Formal	Bottom Line	Fixed price with price adjustment	July 1-June 30 Annual
Small wares	Formal	Bottom Line	Fixed price	Annual
Capital Equipment	Formal	Bottom line	Fixed price	Annual
Fresh Bread	Formal	Bottom line	Fixed price with price adjustment	July 1-June 30 Annual
Milk and Dairy Products	Formal	Bottom line	Fixed price with price adjustment	July 1-June 30 Annual
Office Supplies	District contract	Bottom line	Cost reimbursable plus fixed-fee	July 1-June30 Annual
Processing USDA Foods	Formal	Bottom line	Fixed price	July 1-June 30 Annual
Emergency	Micro-purchase/ small purchase procedures (requires authorized PO)	Price Reasonable	No contract, equitable distribution, transactions limited to $3,500 or less	As needed

5. Formal bid procedures will be applied on the basis of a:

   X Centralized System
   ____ Individual School
   ____ Multi-School Systems
   ____ State Contract
   ____ Combination of above (specify):

6. Because of the potential for purchasing more than $150,000, it will be the responsibility of the Director of Food Service to document the amounts to be purchased so the correct method of procurement will be followed.

Section B Formal Purchases

When a formal procurement method is required, the following competitive sealed bid or an invitation for Bid (FB) or competitive proposal in the form of a Request for Proposal (RFP) procedures will apply:

- An announcement of an IFB or RFP will be placed in a state-wide paper (i.e. Union Leader) and SAU #26 website to publicize the intent of the SFA to purchase needed items. The advertisement for bids/proposals or legal notice will be run for 2 weeks.

- An advertisement is required for all purchases over the SAU's small purchase threshold of $30,000. The announcement (advertisement) will contain a:
  - General description of items to be purchased,
  - Deadline for submission of questions and the date written responses will be provided including addenda to bid specifications, terms and conditions as needed
  - Date of pre-bid meeting, if applicable, and if attendance is a requirement for bid award
  - Deadline for submission of sealed bids or proposals, and
  - Address of location where complete specifications and bid form may be obtained.

- In an IFB or RFP, each vendor 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 IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the procurement document:
  - Contract period,
  - SFA is responsible for all contracts awarded (statement),
  - Date, time, and location of IFB/RFP 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 which the SFA will be entitled if the contractor cannot or will not perform as required,

- Statement assuring positive efforts will be made to involve minority-owned, women-owned and small businesses,
- Statement regarding the return of purchase incentives, discounts, rebates and credits to the SFA's non-profit child nutrition account,
- Contract provisions as required in Appendix II to 2 CFR 200,
- Contract provisions as required in 7 CFR 210.21(f) for all cost reimbursable contracts,
- Contract provisions as required in 7 CFR 210.16(a)(1-1)) and 7 CFR 250.53 for Food Service Management company (FSMC) contracts,
- Procuring instrument to be used are purchase orders from firm fixed prices after formal bidding,
- Price adjustment clause (tied to Consumer Price Index).
- Method of evaluation and type of contract to be awarded (solicitations using an IFB are awarded to the lowest responsive and responsible bidder; RFP awarded to the most advantageous bidder/offer or with price as the primary factor among factors considered),
- Method of award announcement and effective date,
- 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, State Agency, USDA or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts,
- Method of shipment of delivery upon contract award,
- Provision requiring contractor 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 contract 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 (PL 94-165),
- Signed statement of non-collusion
- Signed Debarment/Suspension Certificate, or statement included in contract, or copy of Excluded Parties List System (EPLS)
- Provision requiring "Buy American" as outlined in 7 CFR Part 210.21(d); specific instructions for prior approval of all non-domestic products(s).

- Specifications and estimated quantities of products and services prepared by SFA and provided to potential contractors desiring to submit bids/proposals for the products or services requested.

- 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 Director of Food Service and date specified.

- The Director of Food Service will be responsible for securing all bids or proposals.

- The Director of Food Service will be responsible to ensure all SFA 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 (highest weighted criteria)
  - Service Availability
  - Quality
  - Prior Performance

In awarding a 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 among all factors 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 is most advantageous to the SFA, price as the primary criteria and other factors considered. Any and all bids or proposals may be rejected in accordance with law.

- The Director of Food Service is required to sign on the bid tabulation of competitive sealed bids.

- The Director of Food Service reviews the procurement system to ensure compliance with applicable laws.

- The Director of Food Service is responsible for documenting the actual product specified is received.

- Any time an accepted item is not available, the Director of Food Service will select the acceptable alternate. The contractor must inform the Director of Food Service by email when a product is not available. In the event a non-domestic agricultural product is to be provided to the SFA, the contract must obtain, in advance, the written approval of the product. The Director of Food Service must comply with the Buy American provision.

- Full documentation as to the reason an accepted item was unavailable, and to the procedure used in determining acceptable alternates, will be available for audit and review. The person responsible for this documentation is the Director of Food Service.

- The Director of Food Service is responsible for maintaining all procurement documentation.

Section C Informal Purchases

If the amount of purchases for items is less than the SAU #26's small purchase threshold, the following, SMALL PURCHASE PROCUDURES, including quotes, will be used. Quotes from an adequate number of qualified sources will be required.

- Written Specifications will be prepared and provided to the vendor.

- Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of three (3) vendors shall be contacted.

- The Director of Food Service will be responsible for contacting potential vendors when price quotes are needed.

- The price quotes will receive appropriate confidentiality before award.

- Purchases will be awarded by the Director of Food Service. Purchases will be awarded to the lowest and best quote based upon quality, service availability, price and/or prior performance.

- The Director of Food Service 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.

- The Director of Food Service will be responsible for documenting that the actual product specified is received.

- Any time an accepted item is not available, the Director of Food Service will select the acceptable alternative. Full documentation will be made available as to the selection of the acceptable item.

- Bids will be awarded on the following criteria:
  - Price (highest weighted criteria)
  - Service Availability
  - Quality
  - Prior performance

- The Director of Food Service is required to sign all quote tabulations, signifying a review and approval of the selections.

Section D Non-Competitive Purchases

If items are available only from a single source when the award of a contract is not feasible under small purchase, sealed bid or competitive negotiation, NON-COMPETITIVE PROPOSAL procedures will be used:

1. Written Specifications will be prepared and provided to the vendor.

2. The Director of Food Service will be responsible for the documentation of records to fully explain the decision to use the non-competitive proposal. The records will be available for audit and review.

3. The Director of Food Service will be responsible for documentation that the actual product or service specified was received.

4. The Director of Food Service will be responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive proposals are met.

Non-Competitive proposals shall be used for one-time purchase of a new food item in order to determine food acceptance by students and for samples for testing purposes. A record of non-competitive negotiation purchase shall be maintained by the SFA Official. The record of non-competitive purchases shall include, at a minimum, the following:

- Item name,
- Dollar Amount,
- Vendor, and
- Reason for Non-Competitive Procurement

The Assistant Superintendent for Business will approve, in advance, all procurements that result from non-competitive negotiations.

Section E Miscellaneous Provisions:

1. New product evaluation procedures will include:
   - Nutrition Guidelines
   - Affordability
   - Availability

2. The School Food Authority agrees that the reviewing official of each transaction will be the Director of Food Service.

3. Payment will be made to the vendor when the contract has been met and verified and has met the SFA's procedures for payment. (If prompt payment is made, discounts, etc. are accepted.)

4. Specifications will be updated as needed.

5. If product is not as specified, the following procedure will take place:
   - Vendor will be notified
   - Reasons for non-acceptance will be rendered

Section F Emergency or "Pressing Need" Purchases

1. If it is necessary to make a one-time emergency procurement to continue service or obtain goods, the purchase must be authorized using a purchase order signed by the SFA's Business Official. The following emergency procedures shall be followed.

   - All emergency procurements shall be approved by the SFA Official.

   - At a minimum, the following emergency procurement procedures shall be documented:
     - Item name,
     - Dollar amount,
     - Vendor, and
     - Reason for Emergency

2. If it is necessary, in the course of a pressing need, to make an emergency purchase by means of "piggybacking" on the bid of another district, the following conditions must exist and approved procedures must be followed and appropriately documented as follows:

- The SFA originating the competitive procurement must have a "piggyback provision" in the original solicitation;
- Documentation of the emergency requiring the piggybacking must be maintained;
- Approval from the purchasing SFA's governing board will be obtained and documented;
- Approval from the SFA that originated the competitive procurement will be obtained and documented;
- Approval from the Vendor that was awarded the contract (original solicitation) will be obtained and documented;
- Approval to piggyback will be obtained and documented from the governing board during a regularly scheduled meeting following the public notice;
- Notification to the Vendor of final approval will be documented and issued;
- A contract with the Vendor will be developed including:
- The contractor shall agree to retain all books, records and other documents relative to the contract agreement for three (3) years after final payment, or until audited by SFA, whichever is sooner. The SFA, its authorized agents, and/or State and/or USDA auditors and/or reviewers shall have full access to and the right to examine any of said materials during said period.

3. The SFA shall agree to retain all books, records and other documents relative to the award of the contract for three (3) years after final payment. Specifically the SFA 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 bidding and negotiation history and working papers;
- The basis for contractor selection;
- Approval from the State Agency to support a lack of competition when competitive bids or offers are not obtained;
- The basis for award cost or price;
- The terms and conditions of the contract;
- Any changes to the contract and negotiation history;
- Billing and payment records;
- A history of any contractor claims; and
- A history of any contractor breaches.

G. Code of Conduct

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

Code of Conduct
For
SAU # 26 School Food Authority

Policy Name: Written Code of Conduct

Regulations: 2 CFR Part 200.318, formerly 7 CFR Part 3016.36(b) (3), State Procurement Code and Regulations, and SAU #26, Merrimack School District Purchasing Department.

Procedures: SAU #26, Merrimack School District seeks to conduct all procurement procedures:

- In compliance with stated regulations; and
- To prohibit conflicts of interest and actions of employees engaged in the selection, award and administration of contracts.

No employee, officer, or agent of SAU #26 will participate in the selection, award and administration of a contract supported by a Federal, State or local award if he or she has a real or apparent conflict of interest.

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 their immediate family;
c) His or her partner; or
d) An organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in, or a tangible personal benefit from, a firm considered for a contract.

Officers, employees and agents of SAU #26, a non-Federal entity, may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Disciplinary actions will be applied for violations of such standards by officers, employees, or agents of the non-Federal entity. Based on the severity of the infraction, the penalties could include a written reprimand to their personnel file, a suspension with or without pay, termination or any necessary legal action.

For questions and concerns regarding procurement solicitations, contract evaluations and award, contact:

Purchasing Contacts:	Matthew Shevenell Assistant Superintendent for Business	603-424-6200 Telephone #
	Katelyn Rybkin Food Service Director	603-424-6226 Telephone #

USDA Nondiscrimination Statement / Food and Nutrition Services

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Mail Stop 9410, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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