**SNT Procurement Manual**

**Procurement Policy and Procedures**

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## Procurement is a process

## Procurement is a process…

**Procurement Policy and Procedures Handbook**

**Table of Contents**

[Procurement Policy and Procedures Checklist 5](#_Toc534964005)

[Glossary 6](#_Toc534964006)

[Policy and Procedures Introduction 11](#_Toc534964007)

[Procurement Standards 13](#_Toc534964008)

[When to Consolidate or Break out Procurements (Split Purchases) 13](#_Toc534964009)

[Lease versus Purchase Alternatives 13](#_Toc534964010)

[Intergovernmental Agreements and Purchasing Used Equipment from Another School or Government Agency 14](#_Toc534964011)

[Responsible Contractors – 2 CFR §200.318 (h) 14](#_Toc534964012)

[Responsive and Responsible Contractors 15](#_Toc534964013)

[Responsive and Responsible Bidder and Offeror Determination 15](#_Toc534964014)

[Record Policy 15](#_Toc534964015)

[Bid and Proposal Disputes 16](#_Toc534964016)

[Competitive Procurements 16](#_Toc534964017)

[Geographic Preferences 16](#_Toc534964018)

[Written Procedures for Procurement Transactions 17](#_Toc534964019)

[Technical Specifications, Scope of Services, or Statements of Work 17](#_Toc534964020)

[Solicitation Documents Guidelines 18](#_Toc534964021)

[Prequalified Lists 18](#_Toc534964022)

[Line Item versus Total Cost 18](#_Toc534964023)

[Contract 19](#_Toc534964024)

[Addenda to Solicitation Document or Contract 19](#_Toc534964025)

[Option to Renew a Contract 19](#_Toc534964026)

[Publicly Advertised Procurements 19](#_Toc534964027)

[Opening of Bids and Proposals 19](#_Toc534964028)

[Late Bids or Proposals 20](#_Toc534964029)

[Bid or Proposal Requirements 20](#_Toc534964030)

[Tied Bids and Proposals Evaluation Scores 20](#_Toc534964031)

[Request for Information (RFI) 20](#_Toc534964032)

[Sale Tax Exemption 21](#_Toc534964033)

[Solicitation of Small and Minority Business 21](#_Toc534964034)

[Procurement Methods 22](#_Toc534964035)

[Summary of Procurement Methods: 22](#_Toc534964036)

[Micro-Purchases 22](#_Toc534964037)

[Small Purchase 23](#_Toc534964038)

[Sealed Bids 24](#_Toc534964039)

[Competitive Proposals 25](#_Toc534964040)

[**Public Notice Requirements** 25](#_Toc534964041)

[**Example of Public Notice** 25](#_Toc534964042)

[**Solicitation (RFP/Bid) Tracking Examples:** 26](#_Toc534964043)

[**Using a RFP to Procure Products and Services** 27](#_Toc534964044)

[**Formation and Performance of Evaluation and Selection Committees** 27](#_Toc534964045)

[**Selection Committees Members** 27](#_Toc534964046)

[**First Meeting with Selection Committee** 27](#_Toc534964047)

[**Conflict of Interest** 27](#_Toc534964048)

[**Committee Rules and Procedures** 27](#_Toc534964049)

[Noncompetitive Procurements 29](#_Toc534964050)

[**Emergency Procurements** 29](#_Toc534964051)

[**Sole Source Procurements (Limited Competition)** 30](#_Toc534964052)

[Cooperatives - Intergovernmental Contracting - Piggybacking 30](#_Toc534964053)

[Types of Buying Groups 31](#_Toc534964054)

[1) **School Purchasing Association** 31](#_Toc534964055)

[2) **School Cooperative (co-op)** 31](#_Toc534964056)

[3) **Government Purchasing Organization (GPO) or State Sponsored Cooperatives** 32](#_Toc534964057)

[4) **Group Purchasing Organization (GPO)** 32](#_Toc534964058)

[Procurement Fees 34](#_Toc534964059)

[Intergovernmental Co-operation and Piggybacking 34](#_Toc534964060)

[**Steps Used for Piggybacking** 34](#_Toc534964061)

[The Buy American Provision 35](#_Toc534964062)

[Complying with the Buy American Provision 35](#_Toc534964063)

[Contract Language 36](#_Toc534964064)

[Bid and Proposal Protest Procedures 36](#_Toc534964065)

[Background information regarding protest procedures 36](#_Toc534964066)

[Why should the SFA have protest procedures prior to awarding a contract? 37](#_Toc534964067)

[Example of protest procedures to include in SFA procurements and awarded contract 37](#_Toc534964068)

[Contract Management 38](#_Toc534964069)

[Identifying a Contract 38](#_Toc534964070)

[Change Orders and Amendments 38](#_Toc534964071)

[Monitoring and Reporting Contractor Performance 38](#_Toc534964072)

[Length of Term of Contracts 38](#_Toc534964073)

[Monitoring, Administration, and Evaluation of Contracts 39](#_Toc534964074)

[Invoice Approval 39](#_Toc534964075)

[Receiving 40](#_Toc534964076)

[Ethics and Code of Conduct 41](#_Toc534964077)

[The SFA follows the Following Ethics and Code of Conduct 41](#_Toc534964078)

[Code of Conduct 41](#_Toc534964079)

[Notes Page 44](#_Toc534964080)

[Attachment A: Buy American – Noncompliant Product List 45](#_Toc534964081)

[Attachment B: Sample Monitoring Procedures for the USDA Child Nutrition Buy American Provision 46](#_Toc534964082)

[Attachment C: Micro-Purchase Method Resources 48](#_Toc534964083)

[Attachment D: Small Purchase Method Resources 49](#_Toc534964084)

[Attachment E: Required Contract Provisions from Code of Federal Regulations (CFR) 53](#_Toc534964085)

[**Quick Reference Table** 53](#_Toc534964086)

[ **Contractual procedure - 2 CFR 200 Appendix II to Part 200 (A)** 54](#_Toc534964087)

[ **Termination Clause – 2 CFR 200 Appendix II to Part 200 (B)** 54](#_Toc534964088)

[ **Equal Employment Opportunity – 2 CFR 200 Appendix II to Part 200 (C)** 54](#_Toc534964089)

[ **Davis-Bacon Act - 2 CFR 200 Appendix II to Part 200 (D)** 54](#_Toc534964090)

[ **Contract Work Hours and Safety Standards Act – 2 CFR 200 Appendix II to Part 200 (E)** 55](#_Toc534964091)

[ **Rights to Inventions Made Under a Contract or Agreement - 2 CFR 200 Appendix II to Part 200 (F)** 55](#_Toc534964092)

[ **Environmental Protection - 2 CFR 200 Appendix II to Part 200 (G)** 56](#_Toc534964093)

[ **Debarment and Suspension Certification - 2 CFR 200 Appendix II to Part 200 (H)** 56](#_Toc534964094)

[ **Lobbying Certification - 2 CFR 200 Appendix II to Part 200 (I)** 56](#_Toc534964095)

[ **Recovered Materials - 2 CFR 200 Part 200 (J) - Procurement of recovered materials.** 57](#_Toc534964096)

[**Attachment F: 2 CFR §200.322   Procurement of Recovered Materials** 58](#_Toc534964097)

# **Procurement Policy and Procedures Checklist**

Each School Food Authority (SFA) is required to have written policies and procedures that cover the following components included in the checklist below. This checklist is used during a Procurement Review to evaluate compliance with required Procurement Policy and Procedures. Use the corresponding regulation below in **bold** to locate more information about each question covered in the checklist within this Department of Public Instruction (DPI) – School Nutrition Team Procurement Manual.

|  |  |  |
| --- | --- | --- |
|  | **PROCUREMENT POLICY AND PROCEDURES CHECKLIST** |  |
| **Instructions:** The SFA will need to answer the questions below. Additionally, the SFA will need to provide a copy of its procurement manual or procurement procedures as part of the Procurement Review. DPI will review the procurement manual or procurement procedures for compliance with applicable federal regulations.  |
| Does the SFA have a procurement manual or written procurement procedures? **[2 CFR 200.318(a)]**If the answer is **NO**, contact DPI to assist in finding resources for developing the SFA’s required procurement manual and/or written procurement procedures. | [ ]  Yes[ ]  No | Send reviewer a copy for review. |
| If you answer **YES** to the questions below, indicate the page number where the regulation(s) is located in the procurement manual or procurement procedures. If the information is located somewhere other than the procurement manual, state where this information is located.  |
| Does the procurement manual have written codes of conduct that include prohibiting real or apparent conflicts of interest for employees engaged in selection, award, and administration of contracts? **[2 CFR 200.318(c)(1)/7 CFR 3016.36(3)(1-1v)]**  | [ ]  Yes[ ]  No |       |
| If yes to number 2 (above), does the code of conduct include the following: |  |  |
| Prohibit officers, employees, and agents from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or parties of subcontracts? **[2 CFR 200.318(c)(1)]** | [ ]  Yes[ ]  No |       |
| Provide for disciplinary actions for violations by officers, employees, or agents? **[2 CFR 200.318(c)(1)]** | [ ]  Yes[ ]  No |       |
| Does the procurement manual describe how your SFA performs its cost or price analysis in connection with every procurement action in excess of the \*Small Purchase Threshold including contract modifications? **[2 CFR 200.323(a)]**\*Small Purchase Threshold is also known as Simplified Acquisition Threshold; the federal and state small purchase threshold is $250,000; your SFA may have a different threshold amount.  | [ ]  Yes[ ]  No |       |
| Does the procurement manual describe steps to assure that small, minority, and women businesses, enterprises, and labor surplus firms are used when possible? **[2 CFR 200.321]** | [ ]  Yes[ ]  No |       |
| Does the procurement manual include: |  |  |
| Description of procedures for contract management, contract administration, and/or oversight? **[2 CFR 200.318]** | [ ]  Yes[ ]  No |       |
| Description of how the SFA avoids acquisition of unnecessary or duplicative items when conducting procurements? **[2 CFR** **200.318(d)]** | [ ]  Yes[ ]  No |       |
| Description of how the SFA awards contracts to responsible contractors? **[2 CFR** **200.318(h)]** | [ ]  Yes[ ]  No |       |
| Procurement records and retention policy? **[2 CFR** **200.318(i)]** | [ ]  Yes[ ]  No |       |
| Protest procedures? **[2 CFR** **200.318(k)]** | [ ]  Yes[ ]  No |       |
| Procedures to ensure clear and accurate description of the technical requirements for the material, product, or service to be procured? **[2 CFR 200.319(c)]** | [ ]  Yes[ ]  No |       |
| Methods for conducting technical evaluations? **[2 CFR** **200.320(d)(3)]** | [ ]  Yes[ ]  No |       |
| Procurement of recovered materials? **[2 CFR** **200.322]** | [ ]  Yes[ ]  No |       |

# **Glossary**

For consistency throughout this document, the below terms shall have the following meanings:

**“Awarded Contract”** is the agreement between the school food authority (SFA) and a vendor, which submitted a bid or proposal selected as the winning bid or proposal, and granted the contract to provide the school food service department with the products and services outlined in the solicitation document.

**“Allowance”** means a value per pricing unit that the manufacturer will deduct from the manufacturer’s cost to the distributor for this contract.

**“Approved Brand”** is a designation applied to products identified by manufacturer and item number, and is preapproved by the school food service department.

“**Aggregate Award”** is the process of awarding a contract by categories for like items.

**“Bid”** means an offer to provide a product or a service in accordance with the specifications and conditions as indicated by the school food service department for a stated price.

**“Bidder or Offeror”** is an entity that submits an offer in response to a solicitation. The term “Proposer” is used when referring an entity responding to a RFP.

**“Best and Final Offer”** is a tool, which can be used during the final evaluation phase of a procurement using a RFP when at least two qualified suppliers remain within a competitive range.

**“Bill of Lading”** is a vendor’s contract and receipt for goods it agrees to transport from one place to another and to deliver to a designated location.

**“Catalog”** is an organized list of goods or services specifying the description, price, unit of measure and other attributes. A catalog may be available as a paper document or in electronic format such as an email or website listing.

**“Child Nutrition (CN) Labeling Program”** is a fee for service program administered by the Agricultural Marketing Service (AMS), with oversight by the Child Nutrition Division (CND) of Food and Nutrition Services (FNS) that evaluates formulations to determine the contribution a serving of a commercially prepared product makes toward the Child Nutrition Program meal pattern requirements. When approved, a label is placed on the end product that states that the product meets USDA specifications and can be credited as a component(s) of the reimbursable meal pattern requirement.

**“Child Nutrition Programs”** refers collectively to the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, and the Child and Adult Care Food Program.

**“CN or CNP or CND”** means Child Nutrition, Child Nutrition Programs, Child Nutrition Director, respectively.

**“Commingle”** means to store, combine, or blend commercial food and substitutable donated food together into a single inventory at a processor’s plant.

**“Contract”** means a comprehensive collection of documents together with the solicitation document and any additions or modifications thereto, bid or proposal submitted by the winning bidder or offeror, and all related attachments. Furthermore, a contract is a formal, legally enforceable agreement between a buyer, the school food service department and a seller who is the vendor, which establishes a legally binding obligation for the vendor to furnish goods and/or services and for the school food service department to compensate the vendor. A contract must clearly and accurately describe the goods, products and/or services to be delivered or performed and the terms and conditions of the agreement.

**“Cost-Reimbursable Contract”** is a type of contract, which reimburses the vendor for costs, incurred under the contract but does not provide for any other payment to the vendor, with or without a fixed fee. In a cost-reimbursable contract, allowable costs will be paid from the non-profit school nutrition account to the vendor net of all discounts, rebates and other applicable credits accruing to or received by the vendor.

**“Contract Administration”** are actions undertaken after the awarding of a contract such as contract amendment, contract closure, record retention, maintenance of the contract file, receipt of goods or services, and handling of invoicing for payment.

**“Contract Management”** is ongoing monitoring and management of the vendor's performance regarding the goods or services awarded in the contract, as well as assuring compliance with all other terms and conditions of the awarded contract, such as pricing and condition of goods or services received. It includes managing the relationship between the vendor and school food service department, the purchasing, communication to the vendor regarding its performance, as well as dispute resolution, if necessary.

**“Contract Modification”** is any written change in the terms of the awarded contract. Contract modifications only become effective when executed by both parties.

**“Contractor”** is any party to an awarded contract with the school food service department. A contractor may take various forms, including an individual person, a company (whether privately or publicly held), or a government agency.

**“Cost”** means the vendor’s invoice price from the manufacturer or supplier plus inbound freight.

 **“Cost Estimate”** is an approximate calculation of charges or costs to supply goods or services.

**“Day(s)”** mean a calendar day during a normal work week, Monday through Friday, except established national holidays unless otherwise stated.

**“Default”** is a failure by a vendor to meet one or more of its obligations under the awarded contract.

**“Delivery Time”** is the time taken to deliver goods or services from the date of awarded contract to the time when the vendor makes the goods or services available to the school food service department at the agreed place as per the delivery terms.

**“Department of Public Instruction” or “DPI”** is a state of Wisconsin governmental agency.

**“Direct Diversion”** is Bulk USDA Foods ordered by DPI, on behalf of the school food service department, to be shipped directly from a USDA distributor to a processor. These bulk USDA Foods are further processed into End Products according to the school food service department’s request, eligibility, and contract with the distributor or prime vendor. The school food service department is responsible for negotiating the delivery schedule with the distributor or prime vendor.

**“Disposal”** is the process of removing something from a location, typically the removal of scrap, surplus, excess, obsolete and waste items from the school food service department's premises.

**“Diversion”** is a food shipment that has not been received (still in transit) that is rerouted to another location.

**“DoD”** means Department of Defense, who supply fresh fruits and vegetables to the school food service department.

**“End Product”** is a finished product containing any amount of donated foods that have been commercially processed.

**“Escalator/De-escalator Clause”** is a type of market-based pricing which are predetermined provisions in an awarded contract stipulating specific conditions for an increase or decrease in the fixed price.

**“Fill Rate”** is the percentage of ordered items that must be provided in full quantity without substitution or outage.

“**Fixed-Fee”** is an agreed upon amount of money which is fixed at the inception of a cost-reimbursable contract. In a cost-reimbursable contract, the fixed fee includes the vendor’s direct and indirect administrative costs and profit allocable to the contract.

**“Fixed Price”** is a contract term, which indicates the price is set at a certain amount and is not subject to change unless the school food service department requests a change in specifications, delivery, or term. Generally, a school food service department's request for a change to specifications, delivery, or terms in a fixed price contract would only occur in response to an unexpected change in specifications or a critical circumstance that would impact the vendor's ability to fulfill the awarded contract in accordance with the original terms of the solicitation, bid or proposal, and awarded contract.

 **“Free of Board (FOB) Destination”** means there are to be no freight charges to the tail of the truck delivered to the school food service department location (i.e., vendor will not charge freight cost for products delivered to school food service department site(s)). The school food service department must specify the requirement of off-loading product from the delivery vehicle.

**“FNS”** means the Food and Nutrition Service of the U.S. Department of Agriculture (USDA). FNS administers the nutrition assistance programs of USDA. The mission of FNS is to provide children and needy families with better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts.

 **“Food Service Management Company”** is any organization, whether commercial or non-profit, which contracts with a school food service department to manage any aspect of the school nutrition program.

**“Force Majeure”** is a contract provision under which major (and usually uncontrollable) events may excuse a party, in whole or in part, from the performance of its contractual obligations; e.g., fire, war, or severe weather. This is a standard clause in awarded contracts of the school food service department.

**“Full and Open Competition”** means all vendors are playing on a level playing field and have the same opportunity to compete for an awarded contract. Procurement procedures must never unduly restrict or eliminate competition.

**“Good through Date”** indicates the length of time a price will remain unchanged.

 **“Handling Fee”** is the fee that vendor will charge the school food service department per product to purchase a product from a manufacturer or supplier and re-sell. This fee includes the cost of doing business for vendor. This fee must be fixed for the duration of the awarded contract.

**“Invoice”** is a document issued by a vendor to the school food service department, indicating the products and/or services delivered, quantities, and agreed prices for products, which is left with school food service department at the time of delivery.

**“Life Cycle Cost, Whole Life Cost, Total Cost of Ownership”** is the sum of all recurring and one-time (non-recurring) costs over the full life span or specified period of a good, service, structure, or system. It includes purchase price, installation cost, operating costs, maintenance and upgrade costs and remaining residual or salvage value at the end of ownership or its useful life.

**“Logistics”** is the process of planning, implementing and controlling the efficient, cost-effective flow and storage of goods and related information from point of origin to point of consumption for the purpose of conforming to customer requirements.

**“Manufacturer”** means producer of products sold to distributor for resale to the school.

“**Material Change”** is a change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough, had other respondents (vendor/bidder) known of these changes in advance, they may have bid differently and more competitively.

**“MSDS”** means Material Safety Data Sheets.

**“NSLP”** means National School Lunch Program.

**“Monthly Performance Reports”** are reports submitted monthly by the processor to the vendor detailing receipts of USDA Food, sales of finished end products to school food service department, and information on the USDA Food inventory.

**“Net Case Price”** is the price of a processed End Product paid by the school food service department after the value of donated food contained in the End Product has been deducted from the gross price.

**“Proposal”** is a vendor’s response to Request for Proposal (RFP), which includes specifications, and conditions determined by the buyer/purchaser. A contract or purchase can be awarded based on other factors determined by a SFA, in addition to price.

**“Product”** means food and supplies that the school food service department has identified to be purchased; also identified as an item.

**“Solicitation Document”** means a group of documents provided by school food service department to bidders and offerors, which explains the products, and services required and how to respond to the request. These groups of documents include all:

1. Requirements as described in the solicitation document
2. Terms and Conditions as outlined in this solicitation document
3. Excel spreadsheets for pricing (paper and electronic copies)
4. Any and all addenda or special written provisions specified by school after the issuance of the solicitation document
5. Bidder’s or offeror’s certifications, which must be completed, signed by an authorized representative of bidder or offeror, and other required bidder or offeror information
6. Additional required documents
7. Addenda or other terms and conditions added to the solicitation document by bidder or offeror will not be considered a part of the awarded contract

**“Receipt of Goods, Goods Receipt Note”** is an official acknowledgement of receipt of goods

**“Remedy”** means of relief that either party can pursue to compensate for the other party's non-performance or non-compliance with an awarded contract term or condition.

**“School Food Authority”** (SFA) is defined in 7 CFR 210 National School Lunch Program (NLSP) to mean the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the NLSP.

**“Statement”** is the summary of invoices for product delivered to school during a specified period of time, of which the school will verify for payment.

**“Summary End Product Data Schedule” or “SEPDS”** is a compilation or summary of information contained on the end product data schedules (EPDSs).

**“Time”** is the local time at the school food service department location.

**“TCS food”** Time Temperature Control for Safety foods, formally known as Potentially Hazardous Foods, a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production or toxin production of clostridium botulinum. These foods include an animal food that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; leafy greens; cut produce, such as melons and tomatoes; and garlic and oil mixtures.

**“U.S.”** means United States

**“USDA”** means United States Department of Agriculture or Department of Agriculture

**“USDA Foods”**, formally known as “USDA Commodities” are foods purchased by USDA and given to the School for use in Child Nutrition Programs.

**“USDA Foods, Bonus”** is a food item not charged against entitlement or against a program’s appropriated funds. These foods are acquired through the price-support operations of the Commodity Credit Corporation or surplus-removal operations of AMS.

**“USDA Foods Inventory”** is the accounting of donated food for which a DPI, school food service department, or vendor is liable or responsible. In processing, the inventory can include food in physical inventory (on hand), in finished foods, or in book inventory. Vendor who is chosen to deliver finished End Product before receiving USDA Food may encounter negative inventory. The vendor does this at his own risk and USDA is not required to make the vendor whole.

 **“Vendor Choice”** is a designation applied to products with standards of identity or comprehensive specifications. Vendor may propose any brand of product that meets or exceeds the specifications but must commit to supplying this brand for the life of contract.

# **Policy and Procedures Introduction**

**Procurement:** is the act of finding, acquiring, buying goods, services, or works from an external source, often through a competitive [bidding](https://en.wikipedia.org/wiki/Bidding) process. The process is used to ensure the buyer receives goods and/or services, at the best possible price, when aspects such as quality, quantity, time, and location are compared.

\*Procurement policies and procedures must be adhered to when using the food service account (Fund 50 for public schools)\*

**Introduction**

This procurement manual is intended to provide information for the operational activities of the School Food Authority (SFA). This manual is intended to provide sufficient procedural detail to enable the SFA, other governmental agencies, and the vendors to:

1. Be fully aware of, and comply with the school food service department purchasing policies.
2. Effectively participate in the school food service department’s procurements.

In the event there is any contradiction between these guidelines, state, or federal regulations, in most cases the most restrictive regulation shall prevail.

The basic purchasing policies of the school food nutrition department are conducted on the basis of full and open competition to the greatest extent possible, with award being made to the lowest responsive responsible bidder using a small purchase procurement method or sealed bid; or the highest ranked technical proposer(s) under RFPs with which a fair and reasonable price may subsequently be negotiated under solicitations that do not involve pricing as an initial competitive selection factor;

The procurement process must be such:

1. that all specifications or statements of work included in school food service department purchasing actions accurately describe the essential needs of the purchase, and contain no artificial or arbitrary requirements that limit competition or increase cost;
2. that each procurement is conducted in accordance with the best interests of the school food service department, and with the highest level of integrity and fairness to all involved parties throughout the procurement process;
3. that all school food service department purchasing operations be conducted in compliance with federal, state, and local laws as applicable and ensure the highest degree of ethical standards;
4. That transparency and community inclusion be sustained throughout the purchasing process.

**Purpose**

The purpose of this procurement manual is to ensure that goods and services purchased for USDA Child Nutrition Programs are obtained in a cost-effective manner and in compliance with federal, state, and local regulations.

This procurement manual sets forth and explains the basic procurement policies and procedures of the school food service department. It is intended to assist school procurement and contracting personnel, their contractors, and associated suppliers when dealing with procurement related to school food service department. This manual and procedures apply to the procurement of goods, works, and related services.

**Scope**

This procurement manual applies to the food service director (or someone in a similar role) and any other employees authorized to initiate and/or approve purchases paid with federal, state, and local funds.

**Responsibility**

The food service director is responsible for determining whether a purchase is allowable under the program terms and will ensure purchases are in accordance with this procurement manual.

**Mission Statement**

The SFA represents the public and/or private school(s) in the purchase of all goods and services for the food service department at the most favorable prices, terms, and conditions to support the needs of our faculty, staff, and students. The school food service department establishes and maintains a professional and productive relationship with businesses to insure the school food service department is in compliance of federal, state, and local regulations. The SFA maintains the highest level of ethics while procuring goods and services with public funds which have been entrusted to the school food service department while always keeping the interest of the school district’s mission first.

**Program Compliance**

The school food service department operates, conducts procurements, and manages awarded contracts in accordance with applicable state and federal laws governing the federally funded Child Nutrition Programs which includes:

* National School Lunch Program (NSLP)
* School Breakfast Program (SBP)
* School Milk Program (SMP)
* Farm 2 School Program (F2S)
* Fresh Fruit and Vegetable Program (FFVP)
* Other Programs: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Other Programs: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Other Programs: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**How to Do Business with the SFA**

Each year, the school food service department contracts with the vendors for different types of goods, services, and commodities for the benefit of the constituents of SFA. The school food service department is responsible for managing purchasing and contracts. The school food service department welcomes and encourages qualified vendors and contractors, including local businesses, minority-owned firms, small business enterprises, and veteran-owned companies, to respond to solicitations by submitting offers and proposals.

The SFA does not require vendors or any firm, individual, or organization to register with the school food service department in order to do business. However, vendors are encouraged to visit the school food service department website at **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** and join the Vendors List to receive email notifications when solicitations are advertised. The school food service department solicitations are advertised in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ newspaper, and are also available when contacting the school food service department. When a vendor is awarded a contract with the school food service department, someone from the school food service department may contact the vendor to obtain a copy of the vendor’s W-9 and to register the vendor in the financial system for invoice processing and payment.

The school food service department awards contracts and agreements to responsible and responsive bidders and proposers, whose offers or proposals represent the lowest price or best value to the school food service department. The school food service department has a strict No Gifts Policy on all advertised solicitations. The school food service department reviews vendor performance on all awarded contracts received to determine if a bidder or proposer meets the definition of a responsible vendor and may be recommended for award.

For more information on the school food service department purchasing policies and procedures, and to learn more about doing business with the school food service department, please visit our website at **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** or telephone (\_\_\_\_) \_\_\_\_-\_\_\_\_\_ to speak directly with the Purchasing Department or Nutrition Team.

# **Procurement Standards**

As required by federal regulations set forth in 2 CFR §200.318 *General procurement standards* (d) – (k) and 2 CFR §200.319 *Competition* (a) – (d) the school food service department must follow procurement standards, competition, and other local general procurement processes described in this section of the Procurement Policy and Procedures Manual.

When conducting a procurement, the SFA must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

## When to Consolidate or Break out Procurements (Split Purchases)

**2 CFR §200.318 (d)**

The school food service department cannot intentionally split purchases to have them fall below the micro purchase or small purchase thresholds to avoid the formal procurement method. There may be instances in which a specific market supports the need to separate certain products from the overall procurement. For example bread and milk are commonly procured separately from frozen, canned, and dry goods procured through a prime vendor.

## Lease versus Purchase Alternatives

**2 CFR §200.318 (d)**

When the school food service department is considering a lease versus purchase alternatives, it is usually less economical to lease equipment when compared to purchasing it. However, there are some instances where this is not true. For example, short-term leases of equipment which is required for a short time or for a unique task may be reasonable and economically sound. It may also be advisable to lease equipment which undergoes rapid technological change such as personal computers and other Information Technology related equipment. In some cases, it is easier to have equipment maintained if it is leased. If a decision is made to lease equipment, a lease versus purchase analysis should be made. The analysis should be appropriate to the size and complexity of the procurement.

In determining whether the lease of equipment is feasible, the following factors may be considered:

* Estimated length of the period the equipment is required and the amount of time of actual equipment usage
* Technological obsolescence of the equipment
* Financial and operating advantages of alternative types and makes of equipment
* Total rental cost for the estimated period of use
* Net purchase price, if acquired by purchase
* Transportation and installation costs
* Maintenance, storage and other service costs
* Trade-in or salvage value
* Attributed interest costs
* Availability of a servicing facility especially for highly complex equipment (consider if the school food service department service the equipment if it is purchased)

**Analysis to Determine the Most Economical Approach to Purchasing (Needs Analysis)**

**2 CFR §200.318 (d) and 2 CFR §200.323 (a) - (d)**

The purchasing requirement originates when the school food service department identifies an organizational need for goods or services. The school food service department should consider three important phases of the needs analysis which are part of the preparation phase, investigation phase, and decision phase. A needs analysis includes all the activities used to collect information about the school food service department needs, wants, wishes, and desires. A needs analysis can be formal, widespread, and time consuming, or it can be informal, specific, and quick.

The information collected from a needs analysis can be used to help the school food service department define its procurement objectives and understand the costs involved in the procurement. These objectives can then be stated as specific procurement outcomes, which in turn will function as the foundation to which the SFA can develop the solicitation document. Basically, a needs analysis will help the school food service department clarify the purposes of the procurement. The SFA may consider the follow steps in needs analysis:

Preparation phase

1. Understand the user’s goals
2. Understand the decision criteria and constraints
* Economic feasibility
* Operational feasibility
* Technological feasibility
* Timeline feasibility
1. Define the problem clearly
2. Identify the roles of stakeholders
3. Identify sources of information

Investigation phase

1. Develop an understanding of the existing situation
2. Investigate alternatives to the existing situation

Decision phase

1. Develop a model of the proposed solution
2. Make a build-versus-buy decision

## Intergovernmental Agreements and Purchasing Used Equipment from Another School or Government Agency

2 CFR §200.318 (e) and (f)

The SFA will consider use of federal, state, and local government excess and surplus property in lieu of purchasing new equipment whenever such use is feasible and reduces costs. See section Procurement Policy and Procedures Manual for more detailed information.

**Value Engineering Clauses – 2 CFR §200.318 (g)**

Whenever possible the school food service department will consider use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

## Responsible Contractors – 2 CFR §200.318 (h)

The school food service department will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. It is the responsibility of the school food service department to ensure:

* All bids or proposals are responsive,
* All bids or proposals are evaluated and ranked properly,
* The awarded contract is made to the lowest-priced responsive and responsible bid or highest scoring proposal.
	+ A “responsive offeror” is able to meet the requirements of the solicitation.
	+ A “responsible offeror” is willing and capable of furnishing the goods or services solicited.

## Responsive and Responsible Contractors

**2 CFR §200.318 (h)**

The school food service department will facilitate a competitive environment when conducting a procurement. Regardless of the procurement method used, the awarded contracts can only be made to a responsive contractor whose bid or proposal meets all of the minimum product or other requirements specified in the solicitation and who’s a responsible contractor who can and will successfully fulfill the terms and conditions of the contract.

## Responsive and Responsible Bidder and Offeror Determination

**2 CFR §200.318 (h)**

The school food service department shall award its contracts to the responsive, responsible contractors offering the best value, and whose offer or proposal is technically compliant with the requirements listed in the solicitation document. Awarded contracts shall be made to the bidder or proposer offering the lowest price, being the highest ranked, or as otherwise prescribed in the solicitation. The use of the term bidder or offeror shall be understood to include any participant in the procurement process and the term bid or proposal shall be understood to include any offer in response to a solicitation.

A determination of bidder or offeror responsibility shall be made on a contract-by-contract basis.

In making the determination of whether the bidder or offeror has the capability to perform the contract the school food service department may consider factors including, but not limited to, the following:

1. past performance of the bidder or offeror, its principals, affiliates, or supervisory personnel in the execution of prior school food service department contracts;
2. any information which the school food service department may obtain relating to the performance of the bidder or offeror, its principals, affiliates, or supervisory personnel on contracts with third parties, including without limitation, contracts with other governmental entities;
3. financial performance and capability, including without limitation, pending and unsatisfied claims;
4. qualifications and past performance of the personnel who will have supervisory responsibility for the performance of the specific school food service department contract;
5. licensing, certifications, and other permits; and
6. Any significant changes in the bidder’s or offeror’s financial position or business organization.

## Record Policy

**2 CFR §200.318 (i)**

The school food service department will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

## Bid and Proposal Disputes

**2 CFR §200.318 (k)**

The school food service department will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction. See the ‘Ethics and Code of Conduct’ section in this Procurement Policy and Procedures Manual for more detailed information on this topic.

## Competitive Procurements

**2 CFR §200.319 (a) - (1) - (7)**

“*Competitive Procurement*” means that all procurement transactions, including small purchases, must be conducted in a manner that maximizes free and open competition.

"*Free and open competition*” means that all suppliers are "playing on a level playing field" and have the same opportunity to compete.

Procurement procedures must not unduly restrict competition or eliminate competition.

The school food service department will conduct all procurement transactions in a manner providing full and open competition consistent with federal and state procurement standards requires. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or RFPs will be excluded from competing for procurements issued by the school food service department.

Some of the situations considered to be restrictive of competition include but are not limited to:

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

## Geographic Preferences

**2 CFR §200.319 (b)**

The school food service department will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal and state statutes expressly mandate or encourage geographic preference.

Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application allows for an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

## Written Procedures for Procurement Transactions

**2 CFR §200.319 (c) - (1) through (2)**

Per this Procurement Policy and Procedures Manual the school food service department has met the federal requirement for written procedures for procurement transactions. These procedures contained herein ensure all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

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

## Technical Specifications, Scope of Services, or Statements of Work

**2 CFR §200.319 (c)**

The school food service department requires all technical specifications, scope of services, or statements of work be stated in terms of function, performance or design. The type of specifications selected is to be based on the school food service department minimum requirements and the market available to satisfy those requirements.

The school food service department when drafting its solicitation document will consider the following factors in developing specifications:

1. Does it describe the needs in terms of function or performance required?
2. Does it clearly state the minimum requirements acceptable?
3. Does it indicate the end usage or expected results?
4. Is it clear, concise, and understandable?
5. Does it encourage competition by considering more than one source of supply?
6. Are standard specifications available?
7. Are the specifications tailored to more than one contractor?
8. If a specific brand and model are referenced, have you included the term “or approved equal”? If not, have you included a reason why an equal is not acceptable?
9. Is there anything unusual to be considered?

## Solicitation Documents Guidelines

**2 CFR §200.319 (c)**

The school food service department when developing its solicitation documents will ensure the description and scope are aligned with what is being procured. Furthermore, the school food service department will clearly define in the solicitation document what is meant by a responsive offer, such as:

* Identify all of the requirements which the bidders or offerors must fulfill
* The solicitation must specify the resulting contract type (clearly state whether solicitation will result in fixed price or cost reimbursable contract)
* Include contract duration
* Include specific pricing structure
* Include how all bids or proposals will be evaluated
* Include clear and accurate description of the requirements for the material, product, or service to be procured will be incorporated but should not contain features which unduly restrict competition
* Other elements to include: clear and specific time periods, clauses regarding termination for cause or convenience, and remedies for breach (e.g., negligence, nonperformance)

## Prequalified Lists

**2 CFR §200.319 (d)**

The school food service department will ensure all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the school food service department will not preclude potential bidders or offerors from qualifying during the solicitation period.

## Line Item versus Total Cost

**2 CFR §200.320 (c)**

“*Line Item*” is a process of awarding a contract based on individual pricing for each item contained in the solicitation. The solicitation may have contained several items, but the award will be based on lowest individual price quoted for each item. Multiple contract may be awarded using this process.

“*Total Cost or Lot*” is a process of awarding a contractor a contract based on overall (bottom line) pricing of all the items contained in the solicitation. The solicitation may have contained several items but the award will be based on the overall lowest price quoted for all the items. Normally only one contract may be awarded using this process.

## Contract

**2 CFR §200.22**

“*Contract*” means any agreement, including but not limited to a purchase order, informal or formal agreement, which is a legally binding relationship and enforceable by law, between a contractor who agrees to provide or perform goods or services and the school food service department which agrees to compensate a contractor, as defined by and subject to the terms and conditions of the agreement.

**Elements of a Contract –** There are five key elements that make a “contract”.

|  |  |
| --- | --- |
| **Offer** | A proposal/bid made by one entity to another |
| **Acceptance/Agreement** | Expression of agreement between entities |
| **Consideration** | The thing of value promised to one entity in exchange for something else |
| **Capacity** | All entities are legally able to enter a contract (Minors, mentally incompetent, etc.) |
| **Legality** | Cannot involve doing something that is illegal |

## Addenda to Solicitation Document or Contract

There may be occasions when it will be necessary to change the specifications, terms, or conditions of a given solicitation or contract during the course of the bid (or proposal) period or after the award. Such changes may be required in response to request or clarifications, contractor questions, or other reasons. Such changes shall be formalized by the issuance of solicitation or contract addenda by the school food service department, to all potential contractors which have obtained the solicitation document or entered into the awarded contract. The addenda becomes part of, and supersedes, the original solicitation document or awarded contract.

## Option to Renew a Contract

An option to renew an awarded contract is a provision providing for the option to renew at the expiration of the initial term of the contract. Authorization to exercise future renewal of contracts must be contained in the language of the solicitation document and subsequent awarded contract. For SFAs located in Wisconsin, the base contract (original awarded contracted) may be renewed up to four times in increments of 12 months (base contract year plus option of four 1 year renewals).

**Contract Requirements – 2 CFR 200 Appendix *II Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* contract terms.**

See Attachment A: “Required Contract Provisions from Code of Federal Regulations (CFR), Title 2 Grants and Agreements Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” for a list of federally required contracting terms.

## Publicly Advertised Procurements

**2 CFR §200.320 (c) (2) (i)**

All Invitation for Bids (IFBs) and RFPs (RFPs) will be publicly advertised in the local newspaper. If two or fewer bids or proposals are received, the SFA will use a newspaper or publication with a larger readership to ensure contractors had an opportunity to compete for the awarded contract.

## Opening of Bids and Proposals

**2 CFR §200.320 (c) (2) (iii)**

Sealed bids under the IFB process shall be opened at the place, date, and time specified in the solicitation or any subsequent addendum. Proposals submitted under the RFP process shall be opened at the time and place specified in the solicitation or any subsequent addendum.

## Late Bids or Proposals

**2 CFR §200.320 (c) (2) (iii)**

The school food service department will not accept late bids or proposals. All late bids or proposals will be returned to the sender unopened.

## Bid or Proposal Requirements

**2 CFR §200.318 (h)**

Each offer shall meet all the requirements of the specific solicitation, unless waived as an irregularity or informality by the school food service department.

## Tied Bids and Proposals Evaluation Scores

Tied bids are offers where one or more responsive and responsible bidders offer the same low price for an item or group of items, depending on the method of award. In such instances, the school food service department will request BAFOs from the bidders that offered the same price. The BAFOs must be requested at the same time or soon after the preliminary bid tabulation is provided to all responding bidders. This allows all bidders to see the prices that were bid, and the bidders that offered the same pricing.

Request for BAFO must include a due date (close of business is acceptable) and may be emailed directly to the school food service department or delivered to the school food service department business office. In the event responses to best and final offers result in another tied bid, the tie shall be broken by the food service manager or designee flipping a coin in the presence of representatives from the offers company and/or other school district directors.

## Request for Information (RFI)

A Request for Information (RFI) is a written solicitation prepared and issued for the purpose of seeking information, comments, or reactions from the industry by a certain date and time. A RFI may be used during the market research phase of a procurement to assist the school food service department in identifying potential bidders, proposers, approaches, prices, or other relevant information. The RFI precedes the issuance of a RFP or bids. Contract awards cannot be made on responses to a RFI.

**Rejection of Bids or Proposals**

The school food service department may reject any and all bids or proposals or parts of all bids or proposals when such rejection is in the best interest of the school food service department. Rejection of bids or proposals may also be protested.

A bid or proposal may be rejected if any of the following conditions exist:

1. The bid or proposal does not conform to the technical specifications and/or solicitation documents;
2. Insufficient financial resources and/or lack of technical ability, physical capacity and/or skill of the contractor to perform the contract or the service required;
3. Inability of the contractor to perform the contract or provide the service within the time specified without delays or interference;
4. Previous and existing non-compliance by the contractor with laws and ordinances relating to the contract for services;
5. Inadequate quality or performance on previous contracts for goods and/or services;
6. Contractor has been declared to be in default on any school food service department or public entity contract, or debarred or suspended by any public entity;
7. Taking exceptions to the terms, conditions, and specifications of the bid or proposal;
8. Non-conformance with minority business and/or disadvantaged business enterprise provisions and requirements, where applicable;
9. When the school food service department determines that the price quoted is not fair and reasonable;
10. Insufficient competition;
11. Any other cause in the best interest of the school food service department.

## Sale Tax Exemption

**2 CFR §200.470; also see Wisconsin State Statute Regarding Sale Tax Exemption**

The school food service department is exempt from paying Wisconsin State Sales Tax. The Sales Tax Exemption privilege is for the purchase of goods exclusively for use of the school food service department. The school food service department employees are expressly prohibited from purchasing goods or supplies for personal use using the school food service department’s tax exemption number/certificate.

## Solicitation of Small and Minority Business

**2 CFR §200.321**

The school food service department may take affirmative steps to ensure that small businesses, minority-owned businesses and women’s business enterprises are used whenever possible. Affirmative steps shall include the following:

1. Including qualified small businesses, minority-owned businesses and women’s business enterprises on solicitation lists
2. Assuring that small businesses, minority-owned businesses and women’s businesses are solicited whenever they are potential sources;
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small business, minority-owned business and women’s business participation;
4. Where the requirement permits, establishing delivery schedules which will encourage participation by small businesses, minority-owned businesses and women’s businesses;
5. Using the services and assistance of the Small Business Administration and the Department of Commerce’s Minority Business Development State Agency in the solicitation and utilization of small businesses, minority-owned firms and women’s business enterprises.

# **Procurement Methods**

As required by 2 Code of Federal Regulations parts 200.320 Methods of procurement to be followed.

The SFA utilizes the following procurement methods with associated purchasing thresholds.

## Summary of Procurement Methods:

**Micro-Purchases**

* May be used when contract value is less than $\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Federal and state threshold is $10,000
	+ - Must be compliant with 2 CFR § 200.67 and 2 CFR § 200.320(a)

**Small Purchases**

* Also known as 3 Bids and a Buy
* Must be compliant with 2 CFR §200.320(b)
* May be used when contract value is less than $\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	+ - Federal and state threshold is $250,000

**Sealed Bid**

* Procurement tool used: IFB
* Must be used when contract value is greater than $\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	+ - Federal and state threshold is $250,000
* Must be compliant with 2 CFR §200.320(c)

**Competitive Proposal**

* Procurement tool used: Request for Proposal (RFP)
* Must be used when contract value is greater than $\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	+ - Federal and state threshold is $250,000
* Must be compliant with 2 CFR §200.320(d)

**Procurement by Noncompetitive Proposals**

* Must be compliant with 2 CFR §200.320(f)

## Micro-Purchases

Addition resources for Micro-Purchases can be found on Attachment A: “Micro-Purchase Method Resources”

Micro-Purchases: Micro-purchase means an acquisition of products or services where the aggregate amount does not exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

***Competition***: Purchases within the micro-purchase threshold can be awarded without soliciting competitive price quotations if the price is reasonable.

***Purchases***: To the extent practicable, purchases must be distributed equitably among qualified suppliers with reasonable prices.

This distribution of purchases among qualified suppliers can happen in one of two ways; at the time of the purchase or over several purchasing events. For example a school procuring apples may purchase them either:

1. from various suppliers at the same time (the total of the purchases cannot exceed $10,000), or
2. Choose one supplier for the purchase of the apples and another supplier the next time apples need to be purchased (each of the purchases cannot exceed $10,000).

***Reasonable Price***: Ways to verify the reasonableness of a price is to compare previous purchases, have personal knowledge of the item being purchased, or compare to similar items being purchased.

***Records***: Records still need to be kept for all purchases regardless of the procurement method used, including micro-purchases.

***Federal Regulatory Definition for a Micro-Purchase (2 CFR §200.67)***

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-federal entity's small purchase procedures. The non-federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is $10,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

***Federal Regulation for a Micro-Purchase (2 CFR §200.320(a))***

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

## Small Purchase

Procurement by Small Purchase Procedures 2 CFR §200.320(b)

See Attachment B: “Small Purchase Method Resources” for additional resources with this purchasing method.

Small purchase procedures are those relatively simple and informal procurement methods used to purchase:

* services,
* supplies, or
* other property that does not cost more than the Simplified Acquisition Threshold.

Small purchase procedures are used when estimated value of the purchase of awarded contract is less than the Simplified Acquisition Threshold.

* Federal and DPI Simplified Acquisition Threshold is $250,000 (2 CFR §200.88).
* School food service department Simplified Acquisition Threshold (sometimes called Small Purchase Threshold) is $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

If small purchase procedures are used, price or rate quotations (bids) must be obtained from an adequate number of qualified sources. This purchase procedure is sometimes referred to as “3 Bids and a Buy.”

* Public notice is not required (example newspaper ad).
* Price or rate quotations can be opened at any time.
* Price or rate quotations can be either verbal or written.
* Awarded contract (purchase) is based on lowest price from a responsible bidder who submits a responsive bid.
* Records must to be kept for all purchases regardless of the procurement method used; including small purchase.

## Sealed Bids

Procurement by Sealed Bids 2 CFR §200.320(c)

Bids are publicly solicited 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 for bids
* Vendor provided the lowest price.

Sealed Bids purchase procedures are used when estimated value of the purchase of awarded contract is equal to or greater than the Simplified Acquisition Threshold.

* Federal and DPI Simplified Acquisition Threshold is $250,000 (2 CFR §200.88).
* School food service department Simplified Acquisition Threshold (sometimes called Small Purchase Threshold) is $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\*Procurement tool used for sealed bids is call an IFB\*

\*Awarded contract (purchase) is based on lowest bid\*

The sealed bid method is the preferred method for procuring construction, if the conditions in 2 CFR §200.320 (c) (1) of this section apply.

1. In order for sealed bidding to be feasible, the following conditions should be present:
2. A complete, adequate, and realistic specification or purchase description is available.
3. Two or more responsible bidders are willing and able to compete effectively for the business.
4. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
5. If sealed bids are used, the following requirements apply:
6. Bids must be solicited from:
	* + an adequate number of known suppliers,
		+ providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments,
		+ the invitation for bids must be publicly advertised.
7. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
8. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly.
9. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
10. Any or all bids may be rejected if there is a sound documented reason.

## Competitive Proposals

Procurement by Competitive Proposals 2 CFR §200.320(d)

The technique of competitive proposals is normally used when:

* More than one source submit an offer.
* Either a fixed price or cost reimbursement type contract is awarded

Competitive Proposals purchase procedures are used when estimated value of the purchase of awarded contract is equal to or greater than the Simplified Acquisition Threshold.

* Federal and DPI Simplified Acquisition Threshold is $250,000 (2 CFR §200.88).
* School food service department Simplified Acquisition Threshold (sometimes called Small Purchase Threshold) is $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**Procurement Tool: Request for Proposal (RFP)**

Awarded contract (purchase) is based on highest number of points.

* Cost must be most weighted criteria.

An RFP is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

1. RFP must be publicized and identify all evaluation factors and their relative importance. Any response to publicized RFPs must be considered to the maximum extent practical.
2. Proposals must be solicited from an adequate number of qualified sources.
3. Offers cannot be opened until after a close date and time for accepting offers.
4. The schools must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
5. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

### **Public Notice Requirements**

The public notice needs to contain:

* The name of the school
* Contact information for questions and how to request a copy of the RFP/Bid (ex. email, physical address, or phone number)
* What is being procured: brief description
* Important deadlines such as due dates for proposals/bids
* Any other important information related to the RFP/Bid

### **Example of Public Notice**

Call for proposals to procure the services of a Food Service Management Company (FSMC)

The FSMC will be required to provide meals and manage certain parts of school food service operations, which serves around \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (number of meals each year) each school year.

The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*name of school district*) seeks to award a Cost Reimbursable plus Fixed Fee contract for the \_\_\_\_\_\_‐\_\_\_\_\_\_ school year; additional details can be found in the RFP.

To request a copy of the RFP contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*name of contact person*), at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (email address).

Proposals will be due at \_\_:\_\_\_\_ PM, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*date*) at the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*name of school district*).

Pre-Proposal Conference and Site Visit will be \_\_:\_\_\_\_ PM, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*date*).

The last date for questions will be \_\_:\_\_\_\_ PM, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*date*).

### **Solicitation (RFP/Bid) Tracking Examples:**

Here is an example of a tracking form to track RFPs/Bids sent out, requested, RFPs/Bids received and vendors that declined to respond to the solicitation. Alternatively, you could use an excel spreadsheet to track this information too. Either method is acceptable.

* List of vendors who requested/received a copy of the solicitation document
1. Name of Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date solicitation document sent to Vendor on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Name of Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date solicitation document sent to Vendor on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* List of vendors who submitted a bid in response to the solicitation document
1. Name of Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date solicitation document was submitted by Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Name of Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date solicitation document was submitted by Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* List of vendors who declined request to submit a proposal in response to the solicitation document
* Name of Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date solicitation document was declined by Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Reason for not responding: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* Name of Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date solicitation document was declined by Vendor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Reason for not responding: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

### **Using a RFP to Procure Products and Services**

A Request for Proposal (RFP) is a solicitation whose associated award evaluation and vendor selection process is predicated on a best value evaluation, rather than strictly upon award to the lowest priced responsive and responsible vendor. This type of evaluation is a sensitive and demanding process, and detailed guidelines have been developed to ensure such evaluations are conducted in an appropriate and accurate manner. The following section provides an overview of those procedures to enable the SFA to prepare for, and participate in, negotiated acquisitions in conjunction with the SFA Purchasing Department.

### **Formation and Performance of Evaluation and Selection Committees**

The school food service department is responsible for the review of all proposals for responsiveness before distributing them to the selection committee. A proposer is considered responsive if the proposal conforms in all material respects to the terms and conditions in the solicitation.

### **Selection Committees Members**

The school food service department will determine the number and makeup of the selection committee.

1. Each member must have no personal or financial interest in any contractor which has submitted a proposal to the school food service department.
2. Each member must have a professional interest that the recommendations of the committee can be supported and defended legally and ethically.
3. Each member must have a professional interest that the recommendations of the committee will lead to the selection of a contractor which will provide goods or services that is the best value for the school food service department.

The school food service department shall serve as the selection committee organizer and may not award points for proposals.

### **First Meeting with Selection Committee**

The school food service department shall conduct a first meeting with the selection committee to ensure that each member has a clear understanding of their duties and responsibilities in the selection process. A copy of these guidelines, the solicitation and any addenda, each proposer’s submittal, and a copy of the evaluation criteria will be distributed to committee members.

### **Conflict of Interest**

Once proposals have been received, and it is known which proposers are involved in the evaluation competition, each member of the selection committee will be informed. Each member will be asked if the member has a personal or financial interest in any proposer, and if the member understands and can perform impartially within the selection committee guidelines. If a conflict of interest exists or appears to exist, that member will be disqualified from the committee.

### **Committee Rules and Procedures**

All evaluators on the selection committee are required to apply sound and unbiased judgment in awarding points to the proposals for the purpose of ranking them.

It is very important that all selection committee members read the solicitation thoroughly and have a clear understanding of the requirements and evaluation criteria before attempting to evaluate the proposals. All questions should be directed to the school food service department.

1. The selection committee meetings must follow the appropriate requirements for public meetings at the school.
2. Selection committee members are prohibited from communicating with anyone, either verbally or in writing, regarding the proposals, outside of the scheduled and publicly noticed selection committee meetings. Violations may have legal and ethical ramifications. If a contractor or proposer contacts a committee member, the member must refer the contractor or proposer to the school food service department. Selection committee members are prohibited from participating in individual meetings, informal consultations, lunches, entertainment or any other direct or indirect contact with contractors or proposers.
3. After receipt of proposals, each committee member must review and evaluate each proposal independently, without discussing their evaluation with other committee members.
4. Evaluations must be based on the criteria established in the solicitation. All criteria must be scored. If a member elects to score only some of the proposals or criteria, the evaluations completed by that member will be thrown out in order to prevent skewing of the final scores.
5. Evaluations must be both qualitative and quantitative based on the evaluation criteria outlined in the solicitation. If a member enters a score of zero (0) in any category, that member must identify the deficiency and provide a written explanation for the zero (0) score. All scores and comments become part of the solicitation and contract file and are subject to disclosure under the Wisconsin Public Records Law. Committee members should have a reasonable, rational, and consistent basis for their scores, and be prepared to explain their scores in the event of a protest or inquiry.
6. Prior to the selection committee meeting, any questions, clarifications, or additional information to a proposed by the committee must be submitted in writing through the school food service department. The school food service department is responsible for obtaining a written response from the proposer and sharing the response with all committee members prior to the first meeting.
7. Score sheets must be completed prior to the committee meeting where rankings will be determined. After the selection committee members have independently completed the initial review and scoring of all proposals, the committee will convene and openly discuss the proposals. Members may adjust their initials scoring based on their interpretation of any additional information gained from the committee’s discussions. After all discussions have been completed each committee member shall finalize their scores. Each member is required to sign the score sheet and any note pages and submit them to the school food service department as part of the public record.
8. Score sheets will be tabulated and ranked from the highest to the lowest by the school food service department.
9. Depending on the outcome of the scoring, the committee will recommend one of the following:
	* Award the contract to the highest ranked proposer; or
	* Short-list the top ranked proposers and request scheduling of oral presentations,
10. If the committee recommends awarding the contract to the highest ranked proposal, no further action is required by the selection committee.
11. If oral presentations are requested, the selection committee shall identify which proposers will be asked to provide oral presentations. The selection committee may request oral presentations from as many proposers as necessary; however, it is recommended that the committee come to a consensus and request presentations only from the top-ranked proposers.
12. When oral presentations are requested by the selection committee, the members shall submit a written request to the school food service department for specific areas needing additional explanation and/or clarification or any other information the committee would like the proposers to provide during the oral presentations.
13. All proposers selected for oral presentations will be notified in writing by the school food service department, identifying the date, time, location, with a uniform script listing the specific questions or information requested by the selection committee to be addressed at the presentation.
14. Prior to the oral presentations, the school food service department will provide the evaluation criteria and score sheets to the selection committee.
15. During the oral presentations, committee members will be able to ask questions of the proposers for a clear understanding of each proposer’s position.
16. After oral presentations are completed, the committee will have the opportunity to continue discussions among themselves. After discussions are completed, each member shall finalize their scores. Each member is required to sign the score sheet and any note pages, and submit them to the school food service department as part of the public record.
17. Score sheets will be tabulated and ranked from the highest to the lowest by the school food service department. The award recommendation will be for the proposer with the highest ranked score.
18. The selection committee shall work with the school food service department on a recommendation to award for processing through the school board or as appropriate.
19. All internal workings of the selection committee shall be kept confidential until the committee has completed its work and all proposers have been officially notified of the selection.

## Noncompetitive Procurements

Procurement by Noncompetitive Proposals 2 CFR §200.320(f)

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

**Reasons for Noncompetitive Procurements**

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

### **Emergency Procurements**

If necessary the school food service department may conduct emergency purchase to continue uninterrupted service, the purchase shall be made using noncompetitive negotiation to establish contract terms and price. A log of all such purchases shall be maintained and reviewed monthly by the school food service department. The log of emergency purchases shall show:

* Item name
* Dollar amount
* Vendor
* Reason for emergency

### **Sole Source Procurements (Limited Competition)**

Sole source procurement are purchases of a specific item which is available from only one contractor who is the sole manufacturer and distributor of the item. The school food service department must document its justification for needing the item and why only this specific item will meet this need.

When faced with a sole source procurement, the school food service department must obtain DPI approval, and then go directly to the one source to negotiate terms, conditions, and prices.

If the school food service department receives an inadequate number of responses to its solicitation and it is determined the procurement resulted in a lack of competition, the school food service department must review the solicitation document to ensure no overly restrictive requirements or specification were used, an inadequate number of contractors were solicited, or not enough time was provided for contractors to respond to the solicitation document.

# **Cooperatives - Intergovernmental Contracting - Piggybacking**

When the SFA contracts with a Cooperative, the SFA must be cautious of any Cooperative purchasing contracts and confirm the contracts are not just using Cooperatives approved vendor lists!

To determine whether a Cooperative purchasing agreement was procured using “full and open competition,” ask the Cooperative the following five questions:

1. Were the procurement solicitations advertised in a relevant publication?
2. Did the solicitation document contain specific descriptions of items to be purchased?
3. Did the solicitation document contain renewal terms and other required contracting terms?
4. Did the solicitation document contain specific criteria for awarding the contract?
5. Did the procurement utilize appropriate comparative evaluation process for choosing vendors?

**School Cooperative Contracts**

The school food service department may also use the Cooperative contracts listed below. When goods or services are requested through a Cooperative contract, the contract number must be referenced on the requisition. Cooperatives approved for use by the school food service department are:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

When placing an order using a Cooperative contract, make sure the items you are ordering are included in the Cooperative contract. If they are not, quotes must be obtained for non-included items.

(NOTE: All purchases, whether done independently or through a Cooperative contract must be done in accordance with school food service department procurement rules.)

**\*A School Cooperative is a Type of Buying Group\***

A buying group is the coming together of organizations such as schools that share a common goal and interests, leverage their combined purchasing power, and sharing of core competencies and spreading out the administrative burden of managing multiple and sometime large complex awarded contracts. Buying groups also bring market efficiencies to regional supply chains by reducing the number of different product lines needed to compete in that region.

**Importance of Competition**

Competition is an essential element of any procurement. Competition is the goal of all federal and state procurement requirements because competition will lead to the acquisition of higher-quality goods and services at the lowest possible price. All federal and state procurement requirements exist to achieve this goal by fostering a competitive procurement environment.

The preceding requirements apply when the school food service department seeks the services of an entity such as a School Purchasing Association, Cooperative (co-op), Government Purchasing Organization (GPO) or State Sponsored Cooperatives, and Group Purchasing Organization (GPO), or any entity offering to facilitate access to those types of entities. This applies even if the services are offered at no charge.

## Types of Buying Groups

When planning to join a buying group the school food service department needs to consider the type of buying group in which it would like to participate. Federal and state procurement requirements may vary from one type of buying group to another.

When considering participation in a buying group, the school food service department needs to first determine if the buying group consists of only schools, governmental organizations, and/or non-governmental organizations. Federal and state procurement regulations are always required, but depending on the makeup of the buying group, federal and state procurement regulations will apply differently.

The following are a list of some but not all types of buying groups with corresponding descriptions and procurement requirements:

1. **School Purchasing Association** - this type of buying group is an informal association of schools, governmental organizations, and/or non-governmental organizations that have come together to purchase products or services collectively. After the purchase, the contract is normally held independently of each participant and the supplier, distributor, or vendor. This is different from a co-op or GPO contract with a supplier, distributor, or vendor, with a these types of buying groups, the contract is helped by the buying group and the supplier, distributor, or vendor and not by its members. The school food service department will need to review the procurement of this type of buying group to make sure it complies with Federal and State procurement regulations.
2. **School Cooperative (co-op) -** this type of buying group is an autonomous association of organizations that voluntarily co-operate in purchasing practices and sharing of resources for their mutual economic benefit. Conducting a competitive procurement is not required if the school food service department elects to participate in a Cooperative comprised solely of other schools who joined together to increase purchasing power. The school food service department will not need to undertake the procurement process because the co-op is designed to act on its own behalf which is a collective of other schools. A co-op will need to comply with Federal and State procurement regulations when procuring goods and services for its members.

A school co-op comprised solely of schools procuring as a collective group of schools must procure in the same manner as the school food service department. The school food service department will need to confirm the co-op is comprised solely of schools that act on their own behalf and the co-op is following all required Federal and State procurement regulations. The school food service department will need to review procurement requirements of the co-op to make sure it complies with federal and state procurement regulations.

If the school food service department determines the co-op contains a third party member which is not a school or governmental organization, the school food service department may join the co-op but all purchase through the co-op would require the school food service department to conduct a competitive procurement for those purchases.

1. **Government Purchasing Organization (GPO) or State Sponsored Cooperatives** - this type of buying group is created to leverage the purchasing power of a group of schools and possibly other governmental organizations. This type of buying group may obtain additional volume discounts from manufactures, suppliers, distributors, and vendors. This type of buying group is normally funded by a combination of federal or state funding and membership fees. These fees may be paid directly to the buying group, from manufactures, suppliers, distributors, and vendors contracted by the buying group; or they may be paid directly to the buying group, by its members.

*Cooperative Educational Service Agency (CESA)*is a state sponsored co-op which was formed for the benefit of schools located in Wisconsin and is divided into 12 districts. CESA is granted its authority from Wisconsin Statute Chapter 116. As such, the school food service department can elect to become a member of CESA without the needing to competitively procure membership or goods and services purchased through CESA. Schools and the State of Wisconsin contribute funds to the administration of the CESA. All profits including rebates, discounts, and credits are accounted for in the administration of CESA and accrue for the benefit of schools who are members.

The school food service department does not have to competitively procure membership in this type of buying group.

The school food service department will need to review procurement requirements of the buying group to make sure it complies with federal and state procurement regulations.

If the buying group contains a third party member that is not a school or governmental organization, the school food service department may join the buying group, but all purchase through the buying group would require the school food service department to conduct a competitive procurement for those purchases.

1. **Group Purchasing Organization (GPO)** - this type of buying group is an entity which is created to leverage the purchasing power of a group of public/private organizations and government/non-government organizations including schools. A GPO may obtain additional volume discounts from manufactures, suppliers, distributors, and vendors. GPOs are normally funded by administrative fees. These fees may be paid directly to the GPO, from manufactures, suppliers, distributors, and/or vendors contracted by the GPO; or they may be paid directly to the GPO, by its members.

The school food service department will not have to competitively procure membership in this type of buying group if membership fees are negligible.

A purchase through this type of buying group would require the school food service department to conduct a competitive procurement for that purchase.

**Summary of Buying Groups**

| **Type of Buying Group** | **Ownership** | **Buying Group Members** | **Procurement** |
| --- | --- | --- | --- |
| School Purchasing Association | None | N/A - No membership required | Yes – the school food service department will need to review procurement to make sure it complies with federal and state procurement regulations. |
| Cooperative (co-op) | Co-op | Only Schools | Purchases from co-op do not need to be competitively procured.The school food service department will need to review procurement requirements of the co-op to make sure it complies with Federal and State procurement regulations. |
| Cooperative (co-op) | Co-op | Schools and other government organizations | Purchases from co-op do not need to be competitively procured.The school food service department will need to review procurement requirements of the co-op to make sure it complies with federal and state procurement regulations. |
| Cooperative (co-op) | Co-op | Schools and other non-schools/non-government organizations | Purchases from co-op will need to be competitively procured. |
| Government Purchasing Organization (GPO)OrState Sponsored Cooperatives | Government Organization | Schools and other government organizations | Purchases from GPO do not need to be competitively procured.The school food service department will need to review procurement requirements of the GPO to make sure it complies with federal and state procurement regulations. |
| Group Purchasing Organization (GPO) | GPO | Schools and other non-schools/non-government organizations | Purchases from GPO will need to be competitively procured. |

## Procurement Fees

If the school food service department contracts with contractors for purchasing goods and supplies for use in the food service operation. All discounts, rebates, and applicable credits received by the contractor when purchasing goods on behalf of the school must be returned to the school’s nonprofit school food services account.

Any fee charged to the school food service department which correlates to the amount of discounts, rebates, and applicable credits that the contractor is required to return to the school food service department is an unallowable cost and undermines the intent of the federal and state regulations referenced above.

A fee structured in this way is clearly intended to return some or all of the discounts, rebates, and applicable credits to the company with whom the school food service department has contracted for services rather than to ensure they accrue to the school food service department nonprofit school food service account.

Some examples of fees which are unallowable and directly tied to the amount of discounts, rebates, and applicable credits could include the following:

* A contractor purchases a food product from a distributor on behalf of a school. The distributor offers a 10 percent discount on the cost of the product. The contractor charges the school a 10 percent procurement fee for the service of purchasing the food product. (This practice also violates the cost-plus-a-percentage-of-cost contract prohibition in Title 7, Code of Federal Regulations, Section 3016.36[f][4]).
* A contractor purchases a food product from a distributor on behalf of a school at a cost of $1 per item. The distributor offers a 10-cent-per-item rebate, which the contractor passes along to the school. The contractor then charges the school a 10-cent procurement fee per item purchased from this distributor vendor.

These fees are unallowable charges to the school’s nonprofit food service account.

The school food service department may, however, develop solicitations in a way that allows for management and/or administrative fees which include fees for procurement services. The procurement fee could be a separate fee or part of another contract fee, as long as it remains fixed.

The USDA required all contracts to comply with all aspects of the final rule by November 2009, including procurement fee limitations. (See memo: Allowability of Procurement Fees in SFA Contracts (SP 15-2008) (March 12, 2008))

##  Intergovernmental Co-operation and Piggybacking

While intergovernmental agreements can benefit the school food service department, the school food service department may only enter into an intergovernmental agreement with a state agency or local government agency which allows the schools to join or piggyback onto a state agency or local governmental entity when that agreement was procured and awarded consistent with federal and state procurement regulations.

The school food service department will need to carefully review of the solicitation issued by the state agencies or governmental agency. The school must ensure compliance with applicable federal and state procurement regulations. The school will confirm the addition of their purchasing power to the procurement in scope or in services does not create a material change.

Material changes to the existing contract may arise as a result of the piggybacking because the parties to the existing contract may not have anticipated the increased quantity of goods and services necessary to fulfill the needs of the school. Consequently, a state agencies or local governmental entity may have to rebid at the next juncture because of these material change issues.

**Steps Used for Piggybacking**

If it appears there may be an existing governmental contract which may be used for a specific need, the school food service department will first want to obtain a copy of the entire contract and review it carefully to determine if it contains the provisions required. This is an important first step, because of federal and state regulatory requirements which apply to procurements made through intergovernmental contracts and assignments. If the contract lacks required provisions, you may be able to have it modified by the awarding agency to include the necessary Federal and State requirements. Among the steps you may want to take are the following:

1. Determine the contract is still in effect or can be modified by the awarding agency to permit sufficient lead time to make the required deliveries to the school food service department.
2. Determine the specifications in the existing contract will meet your needs.
3. Review the terms and conditions carefully to determine they are acceptable to you; e.g., warranty provisions, insurance requirements, etc.
4. Determine which of the requirements needed by your school food service department will not be beyond the scope of the awarded contract.
5. Determine if the contract was awarded competitively, either through sealed bids or competitive proposals.
6. You are not required to do a second price analysis if one was originally performed. However, you must determine the contract prices originally established are still fair and reasonable. Circumstances should dictate the steps to be taken. For example, if the original award was made some time ago, you may want to do a market survey and/or perform price analysis to ensure the prices are still fair and reasonable (even if the original award was competitive and a price analysis was performed initially). Similarly, if your deliveries are to be made to a local or centralized delivery point and the original contract calls for statewide deliveries, you may be entitled to a price reduction.
7. Determine if the awarded contract required all the federally required certifications; e.g., Buy America, debarment, restrictions on lobbying, etc.

# **The Buy American Provision**

The Buy American provision was added to the National School Lunch Act (NSLA) by Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336). Section 12(n) to the NSLA (42 USC 1760(n)), requiring SFAs to purchase, to the maximum extent practicable, domestic commodities or products.

* “Domestic Commodity or Product” are defined as an agricultural commodity that is produced in the United States and a food product that is processed in the U.S. using substantial agricultural commodities that are produced in the U.S.
* “Substantial” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the U.S.

The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards SFAs must comply with when purchasing commercial food products served in the school meals programs.

# **Complying with the Buy American Provision**

The SFA will to the maximum extent practicable purchase American grown products as required by participation in the federal school meal programs. Domestic commodity or product means an agricultural commodity produced in the U.S. and a food product processed in the U.S. substantially (at least 51 percent) (7 CFR 210.21, 220.16).

The school food service department will ensure whenever possible and applicable the following language will be added to all written solicitation documents. Absence of this language in a solicitation document does not absolve the school food service department from following the regulations when conducting procurements. This requirement will be communicated to all applicable vendors holding awarded contracts with the school food service department.

## Contract Language

1. Federal regulations require all foods purchased for USDA Child Nutrition Programs be of domestic origin to the maximum extent practicable. While rare, two (2) exceptions may exist when:
2. The product is not produced or manufactured in the U.S. in sufficient, reasonable and available quantities of a satisfactory quality, such as bananas and pineapple; and
3. Competitive proposals reveal the cost of a domestic product is significantly higher than a non-domestic product.
4. Products that are normally purchased by a distributor as non-domestic and proposed as part of a RFP must be identified with the normal country of origin. Distributors shall outline their procedures to notify the SFA when products are purchased as non-domestic.
5. The following products may be exceptions to Buy American provisions: pineapples, mandarin oranges, olives, tuna, bananas and coffee.
6. Any substitution of a non-domestic product for a domestic product (which was originally a part of the RFP), must be approved, in writing, by the food service director, prior to the delivery of the product to the School.
7. Any non-domestic product delivered to the school, without the prior, written approval of the Food Service Director, will be rejected. Should non-domestic substitutes that were not pre-approved in writing by the food service director be delivered to and rejected by the school, selected distributor(s) shall be held accountable for all over-claims that result from failure to meet the school’s required meal pattern.
8. Agricultural products which are canned or packed outside of the U.S. may be accepted with proof from manufacturer that poor market conditions exist (weather, and/or supply availability of market); this requirement applies to private labels as well as other labels.

Distributors must affirm their willingness to assert their best and reasonable efforts to ensure compliance with this federal rule. (*Reference attached DPI and USDA memos for updates related to this regulation requirements.)*

# **Bid and Proposal Protest Procedures**

**Background information regarding protest procedures**

As required by 2 CFR §200.318 *General procurement standards* (k), the SFA has incorporated into its Procurement Policy and Procedures Manual and applicable solicitation documents protest procedures relating to our procurements, and SFA shall in all instances disclose information regarding the protest to the Wisconsin Department of Public Instruction (DPI).

A protestor must exhaust all administrative remedies with the SFA before pursuing a protest with DPI. Reviews of protests by the DPI will be limited to:

1. Violations of federal, state, or local regulations under the jurisdiction of DPI or local authorities and
2. Violations of the SFA’s protest procedures for failure to review a complaint or protest. Protests received by DPI other than those specified above will be referred to the SFA.

In accordance with the aforementioned federal regulation, the SFA will prepared and when applicable, provide within the solicitation process, a method for receiving, and reviewing an objective or appeal to the awarding of a contract.

##

## Why should the SFA have protest procedures prior to awarding a contract?

Aside from required by federal and state regulation, protest procedures are essential to a solicitation and resulting contract; having them in place provides a foundation for resolution of conflict and contract awarding issues.

The SFA cannot always anticipate or account for all future contractual and contract awarding problems. Even when there are excellent procurement policies and procedures in place, some administrative or contractual issues may eventually arise.

Having protest procedure prepared prior to the procurement and awarding of a contract provides a path for receiving, reviewing and resolving disputes arising when an offeror feels the contract was not fairly awarded.

The SFA should avoid a situation where an awarded contract is being disputed and SFA does not have procedures for handling the dispute. Putting together dispute procedures while responding to an awarded contract dispute could cause a need for the SFA to redo the procurement of the products or services awarded in the disputed contract.

**Protest Procedures**: If any offeror who submitted an offer has an objection to the award of the contract to the apparent offeror who submitted a responsive offer and is a responsible offeror with the lowest costs in the case of a bid or scored the greater number of points on a proposal, the objecting offeror shall notify the SFA within two (2) business days of the intent to dispute the awarded contract and furnish its protest, in writing, to the SFA within five (5) business days of the date of the offeror notification of an awarded contract.

The protest shall describe in detail the basis for the protest and shall request a determination under this section of the manual. If a protest is filed in a timely fashion, the SFA will review the basis for the protest and relevant facts under such terms and conditions, as the SFA considers proper. Upon completion of the review, the SFA shall submit findings and recommendations to the school board members who shall then review the matter under such terms and conditions, as deemed proper. Upon receipt of authority to act from the school board members, the SFA will notify the objecting offeror involved of its decision. The decision shall be final and binding on the objecting offeror.

## Example of protest procedures to include in SFA procurements and awarded contract

**Protest Procedures**: Offeror whose proposal has been timely filed and who is aggrieved by the award of a contract to another offeror may appeal the decision by filing a written notice of appeal. The notice must be filed within five (5) business days of the date of the award of contract, exclusive of Saturdays, Sundays, and legal state holidays. The notice of appeal must clearly and fully identify all issues being contested by reference to the page and section of the solicitation document and/or award of contract.

An appeal will be heard by the designated the SFA administration unless the petitioner is not an aggrieved party, or a prior request by the same petitioner relating to the same contract award has been granted, or the request is capricious, frivolous, or without merit.

The burden of proof lies with the petitioner. The evidence presented must specifically address and be limited to one or more of the following:

1. Violation of state or federal law;
2. Irregularities creating fundamental unfairness; or
3. Arbitrary or capricious award.

The appeal will be reviewed by the designated SFA administration who will provide a written response within ten (10) business days after hearing the appeal. If the appealing party is not satisfied with the response, the petitioner may appeal to the designated SFA’s Board of Directors for further review. Further review must be requested in writing, and must be received by the Board of Directors within five (5) business days after the date of the administration’s response. The request for further review must state the reasons the administration’s response is being rejected.

The Board of Directors will review the original appeal and supporting documentation, the response and supporting documentation, and the request for review and supporting documentation. The Board of Directors will meet to rule on the appeal no later than ten (10) business days after receipt for further review. The decision of the Board of Directors shall be in writing and shall be the final decision on the matter.

# **Contract Management**

## Identifying a Contract

A "contract" means a mutually binding legal relationship obligating the contractor to furnish the supplies or services and the SFA to pay for them. Contracts would include, awards and notices of awards, milestones and due dates, purchase orders, and any contract modifications.

The parties to a contract must possess the legal capacity to enter into the contract, and they must agree to the terms of the contract. The terms of the contract must not require the performance of an illegal act by the parties. Contracts may be either oral or written in form.

## Change Orders and Amendments

Contracts should be amended in the same manner in which they were executed unless the contract provides for an alternative method of amendment. When contracting parties request a change to a purchase order or to modify a contract, the request must be signed by both parties to the agreement.

## Monitoring and Reporting Contractor Performance

Contractor performance is any action or inaction by a contractor under a contract, purchase order, or other binding agreement with the school food service department. Any action or inaction by a contractor, which does not comply with the contractual terms and conditions, will be considered nonperformance and is to be documented by the school food service department. Nonperformance includes but is not limited to, late or non-deliveries, substandard or unacceptable goods and/or service levels, habitual under or over shipments, and unauthorized subcontracting or contract assignments.

The school food service department is responsible for monitoring contractor performance as it relates to the terms and conditions of the contract(s) and/or purchase order(s) issued. Contractor nonperformance actions are to be documented by the school food service department for suitable action aimed at correcting contractor performance, placing the contractor on probation for a period of time, suspension from bidding on the school food service department contracts, contractor debarment, and/or contract termination.

The non-performing contractor should first be contacted by telephone or email to discuss the problems being experienced. A mutual understanding should be reached, if possible, and a time frame for corrective action established.

The school food service department should convene a meeting with the contractor to help resolve problems, whenever possible. Should the contractor continue to not meet the requirements, the school food service department should document the problem, including a copy of any letters sent to the contractor or records of meetings (as applicable).

If issues still persist, the school food service department should review the documentation to determine the appropriate course of action. This action may include: calling the contractor, sending the contractor a “Notice to Cure”, or scheduling a meeting with the contractor leadership/management team.

## Length of Term of Contracts

The length of the contract term (beginning and ending date) may vary depending on the type of contract, but the term must not be more than one (1) years with the option to renew for four (4) one (1) year terms, unless the contract falls under one of the exceptions below.

The exceptions to the maximum one year term with 4 options to renew are:

1. When the funding source for a contract provides the contract term must exceed 1 year with 4 options to renew. Such funding sources may include the state or federal government or an outside funding source (private or foundation grant).
2. When the school food service department “piggybacks” on another jurisdiction’s contract which is more than 1 year with 4 options to renew or is subsequently extended for more than the initial 1year term with 4 options to renew.
3. When a specific law, code, or regulation requires a particular type of contract includes certain contract term(s) exceeding the 1 year with 4 options to renew.
4. Contracts for goods, which includes equipment, which have a lifespan exceeding 1 year term with 4 options to renew and the benefits to the school food service department of exceeding a 1-year term with 4 options to renew outweigh the benefits of creating and executing a new contract after all renewals are used.
5. Contracts for technology software or hardware have a lifespan exceeding 1 year term with 4 options to renew and the benefits to the school food service department of exceeding 1 year term with 4 options to renew outweigh the benefits of creating and executing a new contract after all renewals are used
6. Proprietary maintenance contracts.
7. Contracts for project-specific professional services where the length of the project is expected to exceed 1 year term with 4 options to renew.
8. Revenue contracts.
9. Contracts with other governmental entities.
10. When the school board is otherwise able to justify it is in the school food service department’s best interest to exceed the 1 year term with 4 options to renew. For example, the school board is able to demonstrate the financial and/or programmatic impact on the school food service department would be significant if the contract term does not exceed the 1 year term with 4 options to renew.

## Monitoring, Administration, and Evaluation of Contracts

Monitoring, administration and evaluation of school food service department contracts are essential to promoting the most cost effective use of taxpayer dollars and school food service department resources and to ensuring the school food service department receives the goods and/or services for which it contracts.

Although the method used to monitor, administer, and evaluate a contract will depend on the type of contract, the school food service department should develop performance standards and implement a process that incorporates monitoring, administration, and evaluation of contracts. For example, self-monitoring and self-reporting may be appropriate for certain contracts.

The school food service department should also document its performance evaluations of contractors. The retention period for this documentation should the same as the retention period for the subject contract. These performance evaluations may be used by school food service department to evaluate the propriety of entering into contract extensions or future agreements with the same contractor.

## Invoice Approval

For all invoices, the school food service department should approve in accordance with departmental procedures.

* The school food service department will verify the invoice data and ensure that the invoice data matches the purchase order or contract for each item or service ordered with respect to:
* Price
* Manufacturer part number and part description
* Quantity ordered, shipped, and received
* Services provided
* In the event the invoice does not match the purchase order, contract, or what was received, it is the school food service department’s responsibility to resolve the discrepancy with the supplier.
* Any items not needed should be returned to the contractor for proper credit and re-invoicing after receiving a return authorization from the contractor.

## Receiving

Receipt, inspection, and acceptance of ordered goods and services.

* Ordered goods and services should normally be delivered directly to the designated location.
* The department personnel will perform the following duties:
* Verify packing slip information - compare packing slip with purchase order to verify goods and services ordered was shipped.
* Inspect shipment - inspect incoming goods and services for damage and, if found, note it on the invoice and communicate it to the contractor.
* Verify shipment quantity/quality - compare package content to packing slip and purchase order to verify the correct, undamaged quantity of goods and services has been received.

# **Ethics and Code of Conduct**

**And Prohibition on Provisions in Solicitation That Unduly Restrict Competition**

As required by 2 Code of Federal Regulations parts 2 CFR §200.318 (a) – (c) of General procurement standards.

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

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

*(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.*

*(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.*

## The SFA follows the Following Ethics and Code of Conduct

As representatives of the school food service department, all employees are expected to conduct themselves in a professional and ethical manner, maintain high standards of integrity, and use good judgment. Employees are expected to be principled in their business interactions and act in good faith with individuals both inside and outside the school food service department.

The following Code of Conduct shall govern the performance, behavior, and actions of the school food service department, including board members, employees, directors, volunteers, or agents who are engaged in any aspect of procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, or the administration and supervision of contracts.

## Code of Conduct

1. No employee, officer, director, volunteer, or agent of the school food service department shall participate in the selection, award, or administration of a contract supported by federal, state, or local funds if a conflict of interest is real or apparent to a reasonable person.
2. Conflicts of interest may arise when any employee, officer, director, volunteer, or agent of the school food service department has a financial, family, or any other beneficial interest in the vendor firm selected or considered for an award.
3. No employee, officer, director, volunteer, or agent of the school food service department shall do business with, award contracts to, or show favoritism toward a member of his/her immediate family, spouse’s family, or to any company, vendor, or concern who either employs or has any relationship to a family member; or award a contract which violates the spirit or intent of federal, state, and local procurement laws and policies established to maximize free and open competition among qualified vendors.
4. The school food service department’s employees, officers, directors, volunteers, or agents shall neither solicit nor accept gratuities, gifts, consulting fees, trips, favors, or anything having a monetary value in excess of \_\_\_ dollars from a vendor, potential vendor, or from the family or employees of a vendor, potential vendor, or bidder; or from any party to a sub agreement or ancillary contract.

**Disciplinary Action.** Disciplinary action may result from the violation of work rules, from failure to carry out job instructions and assignments properly, or from violation of any law. Disciplinary action shall be progressive and for the purpose of correcting conduct. However, acts of Serious Misconduct (Section C) or other situations may be determined to be of such a serious nature that immediate dismissal is necessary.

It must be recognized that, since each case is different, it is impossible to prescribe a specific penalty for a particular offense. In accordance with Chapter 410 of the Wisconsin Human Resources Handbook (WHRH), a Letter of Expectations may be issued when the behavior of the SFA and/or vendor is not severe enough to warrant formal discipline. Disciplinary actions are cumulative from the effective date of the letter of the first violation until the SFA and/or vendor employee is free from any further discipline for 12 months at which time a progression step may be repeated versus increased to the next level. The level of discipline may be reduced if the employee remains discipline free for longer durations.

**Prohibition on Provisions in Solicitation That Unduly Restrict Competition**. The school food service department shall not include in a solicitation any feature that unduly restricts competition. Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

1. **Excessive Qualifications**. Imposing unreasonable business requirements for bidders or offerors.
2. **Unnecessary Experience**. Imposing unnecessary experience requirements for bidders and offerors.
3. **Improper Prequalification**. Using prequalification procedures that conflict with federal, state, or local regulations.
4. **Retainer Contracts**. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.

Term Defined: A retainer contract is a work for hire [contract](https://en.wikipedia.org/wiki/Contract). It falls between a one-time contract and full-time employment. Its distinguishing feature is that the employer pays in advance for work to be specified later. Additional contracts regarding the performance of this work may also apply.

It is common for a person seeking the services of a lawyer (attorney) to pay a retainer ("retainer fee") to the lawyer, to see a case through to its conclusion. A retainer can be a single advance payment or a recurring (e.g., monthly) payment.

A retainer fee can be paid on a fixed, pre-negotiated rate or on a variable hourly rate depending on the nature of retainer and, the practice of the lawyer/advocate being retained. Both models exist in the industry. The purpose of a retainer fee is to ensure payment for future services or work to be rendered. Absent an agreement to the contrary, a retainer fee is refundable if the work is not performed.

1. **Excessive Bonding**. Requiring a bonding that far exceeds the requirements described in federal, state, or local regulations.
2. **Brand Name Only**. Specifying only a “brand name” product without allowing offers of “an equal” product, or allowing “an equal” product without listing the salient characteristics the “equal” product must meet to be acceptable.
3. **In-State or Local Geographic Restrictions**. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by state or local laws or regulation except as permitted by federal regulations. See section of the Procurement Policy and Procedures Manual for application of geographic restrictions.
4. **Restraint of Trade**. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to, submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.
5. **Arbitrary Action**. Taking any arbitrary action in the procurement process.

Term Defined: An arbitrary action is an action, determination, or selection founded on individual discretion, especially when based on one's opinion, judgment, or prejudice, rather than on fixed rules, procedures, or law.

1. **Excessively Specific Qualifications**. Developing specification and evaluation criteria which unnecessarily favor a particular contractor.
2. **Arbitrary Contract Splitting**. Splitting larger procurements into multiple smaller procurements to evade competition requirements at certain ordering thresholds.

# **Notes Page**

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# **Attachment A: Buy American – Noncompliant Product List**

School Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| --- | --- | --- |
| **1** | **Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Non-domestic** **Agricultural Product:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Storage Area:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**(examples: dry storage, cooler, freezer) | **Country of Origin** (be specific)**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**(examples: grown in Brazil, manufactured in Korea, processed in China, packed in Mexico) |
| **Reason for exception to Buy American provision** (check box if applicable)* **Cost Analysis** – Price of domestic (alternative) was not reasonable; chose non-domestic product
* **Seasonality** – Non-domestic product not available during the following months: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ otherwise product will be purchased domestically
* **Availability** – Non-domestic product not grown domestically
* **Substitution** – Distributor substituted the domestic to non-domestic item for the following reason: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* **Distribution** – Distributor carries the non-domestic item for the following reason: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* **Other Reason** – School selected non-domestic item for the following reason: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Additional notes: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Note: School needs to retain and make notes of communications regarding the reasons for the exception to the Buy American provision. This includes email or procurement notes of discussion regarding alternatives to non-domestic products purchased by the school.*  |

# **Attachment B: Sample Monitoring Procedures for the USDA Child Nutrition Buy American Provision**

**Monitoring of Contract(s)**

1. Confirm applicable and sufficient Buy American contract language is included in ALL procurements when purchasing agricultural processed or unprocessed products.
	1. When utilizing the “over-the-phone” procurement method (one option for conducting a *Small Purchase*), verbally state the Buy American provision requirement.
	2. Include language in the solicitation and contract on how the bidder/offeror would address alternative methods to comply with the Buy American provision, if needed.
	3. Include language in the solicitation and contract that establishes the method of requesting exceptions before supplying nondomestic products.
	4. Monitor and ensure compliance of solicitation and contract language.

**Proactive Compliance Step One**: After awarding contract, set up a meeting with the distributor or vendor to discuss product list and identify products that could have compliance issues with the Buy American provision. Develop a plan with the distributor or vendor to address possible compliance issues and how compliance issues will be communicated, tracked, and resolved.

**Proactive Compliance Step Two:** At the time of ordering, re-confirm with distributor or vendor the country of origin of the products being ordered unless noted in ordering system; note any possible issues and compliance resolutions. Communicate this information to the person or area receiving products at the school.

1. Track Noncompliance Buy American Products:
* [*Buy American – Noncompliant Product List*](https://dpi.wi.gov/sites/default/files/imce/school-nutrition/doc/buy-american-noncompliant-list.docx) (Schools may use this document to track product(s) purchased which do not comply with the Buy American provision)
* [*Buy American Provision Attestation for Agricultural Product(s) Purchased Between School and Contractor*](https://dpi.wi.gov/sites/default/files/imce/school-nutrition/doc/buy-american-attestation.docx)(Schools may use this attestation to track product(s) which do not have country of origin labeling and for purchases that do not comply with the Buy American provision)

**Monitoring When Receiving Deliveries**

1. Review products as they are received to identify any nondomestic products. If necessary use applicable *Tracking Noncompliant Product List* Log/Form/Spreadsheet to track noncompliant products.
2. Review any substituted products to ensure they are domestic. If the country of origin information is not identified on product packaging, contact the distributor or vendor to obtain this information.
3. Implement a process for tracking and addressing the distributor’s or vendor’s a noncompliance if any nondomestic products are received.

**Monitoring All Areas Where Food Products Are Stored**

1. Develop a schedule (monthly, quarterly, or periodically) for reviewing all storage areas to identify any nondomestic products. Some schools monitor Buy American compliance while conducting a monthly physical inventory.
2. Identify any nondomestic products in storage areas and track them in noncompliance log noting any noncompliant resolutions.
3. Implement a process for tracking and addressing the distributor’s or vendor’s noncompliance if any nondomestic products are newly identified.

**Process to Address Vendor’s Noncompliance**

1. If a nondomestic product is identified:
2. Refer to the *Buy American Noncompliant Product List* to check if the noncompliant product has been approved by the school.
3. If unapproved nondomestic product is found during delivery and the need for the product in meal production will allow a delay, reject the product.
4. If unapproved nondomestic product is found during inventory inspection and while reviewing prep/kitchen areas where food products are stored, pull the product from storage and/or indicate that the product should not be used.
5. Notify the distributor or vendor that an unapproved nondomestic product was received and that per the contract a replacement with a domestic product is required to be provided.
6. Document and track the incidence of the distributor’s or vendor’s noncompliance of the Buy American provision.
7. If applicable or if the contract allows, utilize a penalty clause in the awarded contract to assess penalties for incidences of noncompliance with the contract provision. (Penalty clause may include fines for multiple violations.)
8. If applicable or the situation warrants it, utilize the termination clause for termination of the contract for noncompliance of contractual requirements.
9. Consider the distributors or vendor’s noncompliance history or record when evaluating whether to renew the contract.

# **Attachment C: Micro-Purchase Method Resources**

**Example of Micro-Purchase Tracking Log**

**Name of SFA: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**School Year: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**All purchases using the Micro-Purchase method must be less than $ 3,500.**

**All purchase prices must for a reasonable.**

**Purchases must be spread purchases equitably among all vendors.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Vendor Name:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Vendor Name:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Vendor Name:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Vendor Name:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Cycle One** | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Cycle Two** | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Cycle Three** | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Cycle Four** | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Cycle Five** | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date of Purchase:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Total Cost of Purchase:$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Total Spend for each Vendor:**  | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Was total spend with all vendors fairly spread-out? If not, adjust future micro-purchase spend fairly across all vendorsNote: Spend across will never be exact but SFA should also be attempting to fairly spread spend as best as possible; other conditions play a role in fairly spreading spend across all vendors such as “reasonable price”. Reasonable price must always be considered when making a micro purchase. SFA determines reasonable price. GOOD LUCK WITH YOUR MICRO-PURCHASES!  |

# **Attachment D: Small Purchase Method Resources**

**Instructions and example for Completing Informal Procurement Log**

(Purchases costing less than $250,000)

The Informal Procurement Log can to be used to document all bids received as a result of the schools’ solicitation for purchasing products/services costing less than $250,000. A school will need to **solicit at least three bids** in order to achieve competition and to satisfy federal procurement requirements. Schools will need to document the bids and all other pertinent information discussed with the bidders. Schools must make certain that all bidders receive the same product specifications. **All procurement records must be kept for at least three years from the date the last invoice is paid.**

**INFORMAL PROCUREMENT LOG**

|  |  |  |  |
| --- | --- | --- | --- |
| **Supplier Name:** | **Supplier A: Bob’s Company** | **Supplier B: Mary’s Company** | **Supplier C: Pat’s Company** |
| Items to be Purchased:1. Product specifications
2. Delivery Frequency: one time delivery
3. Bid will be honored for: two weeks (school will state time period)
 | Quantity estimated to be purchased | Unit Price | Extended Price (Quantity x Unit Price) | \* SB(✓) | Unit Price | Extended Price (Quantity x Unit Price) | \* SB (✓) | Unit Price | Extended Price (Quantity x Unit Price) | \* SB (✓) |
| * Applesauce 6/10 cans
 | 30 | 15.75 | 472.50 | **🞎** | 16.50 | 495.00 | **🞎** | 15.00 | 450.00 | **🞎** |
| * Pineapple 6/10 cans
 | 10 | 16.25 | 162.50 | **🞎** | 17.50 | 175.00 | **🞎** | 18.00 | 180.00 | **🞎** |
| * Cranberry Sauce 6/10 cans
 | 5 | 25.25 | 126.25 | **🞎** | 21.75 | 108.75 | **🞎** | 23.50 | 117.50 | **🞎** |
| * Peaches, Freestone, (Halves) 6/10 cans
 | 30 | 22.25 | 667.50 | **🞎** | 21.50 | 645.00 | **🞎** | 22.75 | 682.50 | **🞎** |
|  **Total:** | $1433.25 | $1423.75 | $1430.00 |
| \* Selected Bidder (SB) | **🞎** | **☑** | **🞎** |
| \* Selected Bidder (SB); 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. |
| **Method of contact:** Phone, Fax, Email or In Person | Fax | Phone | In Person |
| **Name of person providing bid:** | Bob | Mary | Pat |
| **Date contacted:** | July 11, 2012; Faxed in bid - Bid sheets attached | July 10, 2012; Price given per phone. - Confirmed in writing and attached | July 13, 2012; Visited store and obtained prices. - Price sheet attached |
| **Additional Notes:**Line Item Cost Line Item Total Extended Price: $1,366.25Savings ($1,366.25 - $1423.75) = $57.50Lowest “Total” cost from Supplier BTotal after adding up each of the lowest line item prices | Bob said there fresh fruit and vegetables are more competitively priced than canned goods.  | Best overall pricing; Mary stated that they will have a clearance special going on in October.  | Pat said that there delivery costs have gone up recently but that in November they will have a new distributor and pricing. |
| Because the cost difference between each supplier on a line item basis was negligible; bid will be awarded based on the lowest total priced. |
| Signature of person completing this form: Sam Anderson | Date: July 15, 2012 |

**INFORMAL PROCUREMENT LOG AND EVALUATION MATRIX**

**(Purchases costing less than $250,000)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Supplier Name:** |  |  |  |
| Items to be Purchased:1. Delivery Frequency : \_\_\_\_\_\_\_\_\_\_
2. Bid will be honored for: \_\_\_\_\_\_\_\_ (number of day(s)/week(s)/month(s)) (school will state time period)
 | Quantity estimated to be purchased | Unit Price | Extended Price (Quantity x Unit Price) | \* SB(✓) | Unit Price | Extended Price (Quantity x Unit Price) | \* SB (✓) | Unit Price | Extended Price (Quantity x Unit Price) | \* SB (✓) |
| 1. Product name & specification: |  |  |  | 🞎 |  |  | 🞎 |  |  | 🞎 |
| 2. Product name & specification: |  |  |  | 🞎 |  |  | 🞎 |  |  | 🞎 |
| 3. Product name & specification: |  |  |  | 🞎 |  |  | 🞎 |  |  | 🞎 |
| 4. Product name & specification: |  |  |  | 🞎 |  |  | 🞎 |  |  | 🞎 |
| 5. Product name & specification: |  |  |  | 🞎 |  |  | 🞎 |  |  | 🞎 |
| 6. Product name & specification: |  |  |  | 🞎 |  |  | 🞎 |  |  | 🞎 |
| **Total:** | $ | $ | $ |
| \* Selected Bidder (SB) | 🞎 | 🞎 | 🞎 |
| \* Selected Bidder (SB); 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. |
| **Method of contact:** Email/Fax/Mail/In person/Phone |  |  |  |
| **Name of person quoting pricing:** |  |  |  |
| **Date contacted:** |  |
| Additional Notes: |  |  |  |
| Signature of person completing this form: | Date: |

**Name of bidder selected**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Bidder selected was notified on**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (If notification was in writing attach document to the procurement log/evaluation matrix)

**Method of notification**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Email/Fax/Mail/In person/Phone)

|  |
| --- |
| **INFORMAL PROCUREMENT CHECKLIST**(Purchase costing less than $250,000) |

|  |  |  |
| --- | --- | --- |
|  | **If Yes check** | **If No check** |
| **Planning Process**  |  |
| * School used an informal procurement log?
 |  |  |
| * Documented justification for purchase (replenish inventory, replacement item, etc.)
 |  |  |
| * Documented the period of time the bid price must be honored (days, weeks, or months)?
 |  |  |
| * Documented general purchasing conditions, product specifications, quality and other non-brand descriptions?
 |  |  |
| * Documented quantities to be ordered or purchased?
 |  |  |
| * Documented any other information needed for the bidder to properly respond?
 |  |  |
| **Solicitation Process** |  |
| * Documented companies contacted for bids (Name of company, Address, and Phone number/fax/email)?
 |  |  |
| * Documented who provided the bid; (name of person)?
 |  |  |
| * Documented method of how companies were contacted (in person, telephone, fax, email or mail)?
 |  |  |
| * Were specifications and date that winning bidder will be selected provided to the company providing the bid?
 |  |  |
| * Was the company provided anticipated date that the product or service be needed?
 |  |  |
| * Documented date the bid was provided?
 |  |  |
| * Was school able to obtain bids from at least three bidders?
 |  |  |
| * Were all bids from responsive and responsible bidders?
 |  |  |
| **Evaluation and Award Process** |  |
| * Was evaluation matrix used?
 |  |  |
| * Was the bidder with the lowest bid awarded the contract/purchase?
 |  |  |
| * If the lowest bidder was not selected; did the school document reasons for selecting a higher bid?
 |  |  |
| **Awarding Contract/Purchase and Contract Management Process** |  |
| * Was the bidder that was selected notified?
 |  |  |
| * Was an order placed within the time frame outlined in the procurement?
 |  |  |
| * Was product or service delivered on time?
 |  |  |
| * Did product or service meet procurement specifications for quality and quantity?
 |  |  |
| * Was a record of this procurement including invoices and payment filed for future audits and record reviews?
 |  |  |

**Additional Informal Procurement Requirements**

* School will need to obtain a **minimum of three bids.**
* It is recommended to get as many bids as possible; at least 4 or 5 bids is recommended.
* Once the school obtains the minimum number of bids, the next step is evaluating the bids using a **pricing matrix**
* Only bidders who are responsive and responsible are eligible for evaluation
	+ **Responsive** bidder is a vendor with a product/service matching specifications outlined in procurement event
	+ **Responsible** bidder is a vendor who is able and willing to provide product or service matching those specifications
* The bidder with the **lowest bid** is selected for the purchase

**Informal Solicitation for Bids**

(Purchases with estimated value less than $250,000.00)

**School Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ - Fax Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Email Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Issue Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Invitation:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (school name) invites qualified supplier to submit bids on products described in the “product Information” section of this informal solicitation for bids. Please submit the bid as instructed in “Respond to solicitation” below. Contact \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (contact person) at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (phone number and email) with any questions.

**Product Information**

|  |
| --- |
| **Product Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Product specifications:****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****Delivery Frequency: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Packaging: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****Quantity:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

**Respond to solicitation:**

Please fax/email/mail bid to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Contact name)

Fax/email/mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Return bid by \_\_\_\_\_/\_\_\_\_\_/20\_\_\_ (Due Date)

Bids received after due date above will be ineligible for consideration.

**Bidder Information:**

|  |  |
| --- | --- |
| Company Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Phone Number: ( \_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_\_\_Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **Unit Price: \_\_\_\_\_\_\_\_\_\_\_\_****Extended Price:** \_\_\_\_\_\_\_\_\_\_\_**(Quantity x Unit Price)** |
| Name of person quoting price: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Bid will be honored for:** (school will state time period): \_\_\_\_\_\_\_\_\_Signature of authorized person providing bid:X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_ |

In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA and School are equal opportunity providers and employers. It is the policy of the School not to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, disability, or religion in its programs, activities, or employment practices as required by both federal and state law.

# **Attachment E: Required Contract Provisions from Code of Federal Regulations (CFR)**

**Title 2 Grants and Agreements Part 200**

**Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**

The CFR annual edition is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office.

**Definitions from 2 CFR §200.1**

1. *Federal agency* means an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
2. *Federal awarding agency* means the Federal agency that provides a Federal award directly to a non-Federal entity.
3. *Federal program* means:
4. All Federal awards which are assigned a single number in the CFDA.
5. When no CFDA number is assigned, all Federal awards to non-Federal entities from the same agency made for the same purpose must be combined and considered one program.
6. Notwithstanding paragraphs (a) and (b) of this definition, a cluster of programs. The types of clusters of programs are:
7. Research and development (R&D);
8. Student financial aid (SFA); and
9. “Other clusters,” as described in the definition of Cluster of Programs.
10. *Non-Federal entity* means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

**Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

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.

**Quick Reference Table**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Title | Contract Type and Value  | CFR Regulation |
| A. | Contractual Procedures | Contractual procedure requirements for all awarded contacts with a value greater than $250,000 | 2 CFR 200 Appendix II to Part 200 (A) |
| B. | Termination Clause | Contractual procedure requirements for all awarded contacts with a value greater than $10,000 | 2 CFR 200 Appendix II to Part 200 (B) |
| C. | Equal Employment Opportunity | Contractual procedure requirements for all awarded contacts | 2 CFR 200 Appendix II to Part 200 (C) |
| D. | Davis-Bacon Act | Contractual procedure requirements for all awarded construction contacts with a value greater than $2,000 | 2 CFR 200 Appendix II to Part 200 (D) |
| E. | Contract Work Hours and Safety Standards Act  | Contractual procedure requirements for awarded contacts related to “mechanics and labors” with a value greater than $250,000 | 2 CFR 200 Appendix II to Part 200 (E) |
| F. | Rights to Inventions Made Under a Contract or Agreement | Contractual procedure requirements for all awarded contacts related to experimental, developmental, or research work type Contracts | 2 CFR 200 Appendix II to Part 200 (F) |
| G. | Environmental Protection | Contractual procedure requirements for all awarded contacts with a value greater than $250,000 | 2 CFR 200 Appendix II to Part 200 (G) |
| H. | Debarment and Suspension Certification | Contractual procedure requirements for all awarded contacts with a value greater than $25,000 | 2 CFR 200 Appendix II to Part 200 (H) |
| I. | Lobbying Certification | Contractual procedure requirements for all awarded contacts with a value greater than $100,000 | 2 CFR 200 Appendix II to Part 200 (I) |
| J. | Recovered Materials | Contractual procedure requirements for all purchase price of the items exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000 | 2 CFR 200 Appendix II to Part 200 (J) |

* **Contractual procedure - 2 CFR 200 Appendix II to Part 200 (A)**

Contractual Procedures requirements for all awarded contacts with a value greater than $250,000

**Contractual Procedures** - Contracts for more than the simplified acquisition threshold currently set at $250,000, 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 Clause – 2 CFR 200 Appendix II to Part 200 (B)**

Contractual procedure requirements for all awarded contacts with a value greater than $10,000

**Termination Clause** - All contracts in excess of $10,000 must address:

* Termination for cause and for convenience by the non-Federal entity, and
* The manner by which it will be effected and the basis for settlement.
* **Equal Employment Opportunity – 2 CFR 200 Appendix II to Part 200 (C)**

Contractual procedure requirements for all awarded contacts

**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:

1. the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246,
2. “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
3. Implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor.”

**Notes**: reference following definition of terms for this section:

* ***Federally assisted construction contract*** means any agreement or modification thereof between any applicant and a person for **construction work** which is paid for in whole or in part with funds obtained from the U.S. Government or borrowed on the credit of the U.S. Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the U.S. Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
* ***Construction work*** means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
* **Davis-Bacon Act - 2 CFR 200 Appendix II to Part 200 (D)**

Contractual procedure requirements for all awarded construction contacts with a value greater than $2,000

1. **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.
	1. In addition, contractors must be required to pay wages not less than once a week.
	2. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.
	3. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.
	4. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
2. 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”).
	1. 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.
	2. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
* **Contract Work Hours and Safety Standards Act – 2 CFR 200 Appendix II to Part 200 (E)**

Contractual procedure requirements for all awarded contacts related to “mechanics and labors” with a value greater than $250,000

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)

1. Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of ***mechanics or laborers*** must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
2. 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.
3. 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.
4. 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.
5. 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.

**Notes**: reference following definition of term for this section:

* ***Laborers and mechanics.*** This chapter applies to all laborers and mechanics employed by a contractor or subcontractor in the performance of any part of the work under the contract—

(A) including watchmen, guards, and workers performing services in connection with dredging or rock excavation in any river or harbor of the U.S., a territory, or the District of Columbia; but

(B) Not including an employee employed as a seaman.

* **Rights to Inventions Made Under a Contract or Agreement - 2 CFR 200 Appendix II to Part 200 (F)**

Contractual procedure requirements for all awarded contacts related to experimental, developmental, or research work type Contracts

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 ***sub recipient*** 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 sub recipient 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.

**Notes**: reference following definition of terms for this section:

* 37 CFR § 401.2 Definitions. As used in this part— (a) The term ***funding agreement*** means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
* 2 CFR §200.86   ***Recipient***. Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include sub recipients. See also 2 CFR §200.69 Non-Federal entity.
* 2 CFR §200.93   ***Sub recipient***. Sub recipient means a non-Federal entity that receives a sub award from a pass through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A sub recipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
* **Environmental Protection - 2 CFR 200 Appendix II to Part 200 (G)**

Contractual procedure requirements for all awarded contacts with a value greater than $250,000

Environmental Protection

* 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 sub grants of amounts in excess of $250,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
* Violations must be reported to the Federal awarding agency and the regional office of the Environmental Protection Agency (EPA).
* **Debarment and Suspension Certification - 2 CFR 200 Appendix II to Part 200 (H)**

Contractual procedure requirements for all awarded contacts with a value greater than $25,000

Debarment and Suspension Certification

* 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 government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.”
* SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
* **Lobbying Certification - 2 CFR 200 Appendix II to Part 200 (I)**

Contractual procedure requirements for all awarded contacts with a value greater than $100,000

Lobbying Certification

Contract must adhere to:

1. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).
2. Contractors that apply or bid for an award exceeding $100,000 must file the required certification.
3. 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.
4. 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.
* **Recovered Materials - 2 CFR 200 Part 200 (J) - Procurement of recovered materials.**

See Attachment D: 2 CFR §200.322 Procurement of Recovered Materials for additional instructions.

Contractual procedure requirements for all purchase price of the items exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000

Recovered Materials – Also see §200.322 Procurement of recovered materials.

**Notes**: reference following definition of terms for this section:

* Recovered Materials - Waste materials and byproducts that have been recovered or diverted from solid waste, but does not include materials and byproducts generated from, and commonly reused within, an original manufacturing process
* §200.322   Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

The requirements of Section 6002 include:

1. 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;
2. procuring solid waste management services in a manner that maximizes energy and resource recovery; and
3. Establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

**Attachment F: 2 CFR §200.322   Procurement of Recovered Materials**

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

The requirements of Section 6002 include procuring only items designated in guidelines of the **Environmental Protection Agency (EPA) at 40 CFR part 247** that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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

Link: <https://www.govinfo.gov/content/pkg/CFR-2012-title40-vol26/xml/CFR-2012-title40-vol26-part247.xml>

**Code of Federal Regulations**

**Title 40 - Protection of Environment**

Volume: 26

Date: 2012-07-01

Original Date: 2011-07-01

Title: **PART 247 - COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS**

Context: Title 40 - Protection of Environment. CHAPTER I - ENVIRONMENTAL PROTECTION AGENCY (CONTINUED). SUBCHAPTER I - SOLID WASTES.

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

Authority: 42 U.S.C. 6912(a) and 6962; EO 13423, 72 FR 3919, 3 CFR, 1998 Comp., p. 210.

Source: 60 FR 21381, May 1, 1995, unless otherwise noted.

Subpart A—General

**§ 247.1 Purpose and scope.**

1. **The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act**, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6962, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of this part.
2. This guideline designates items that are or can be made with recovered materials and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA. EPA's recommended practices with respect to the procurement of specific designated items are found in the companion Recovered Materials Advisory Notice(s).
3. EPA believes that adherence to the recommendations in the Recovered Materials Advisory Notice(s) constitutes compliance with RCRA section 6002. However, procuring agencies may adopt other types of procurement programs consistent with RCRA section 6002.

**§ 247.2 Applicability.**

1. (1) This guideline applies to all procuring agencies and to all procurement actions involving items designated by EPA in this part, where the procuring agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more.

(2) This guideline applies to Federal agencies, to State and local agencies using appropriated Federal funds to procure designated items, and to persons contracting with any such agencies with respect to work performed under such contracts. Federal procuring agencies should note that the requirements of RCRA section 6002 apply to them whether or not appropriated Federal funds are used for procurement of designated items.

(3) The $10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger department or agency.

1. The term procurement actions includes:
2. Purchases made directly by a procuring agency and purchases made directly by any person (e.g., a contractor) in support of work being performed for a procuring agency, and
3. Any purchases of designated items made “indirectly” by a procuring agency, as in the case of procurements resulting from grants, loans, funds, and similar forms of disbursements of monies.
4. (1) This guideline does not apply to purchases of designated items which are unrelated to or incidental to Federal funding, i.e., not the direct result of a contract or agreement with, or a grant, loan, or funds disbursement to, a procuring agency.

(2) This guideline also does not apply to purchases made by private party recipients (e.g., individuals, non-profit organizations) of Federal funds pursuant to grants, loans, cooperative agreements, and other funds disbursements.

1. RCRA section 6002(c)(1) requires procuring agencies to procure designated items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines. Procuring agencies may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

[60 FR 21381, May 1, 1995, as amended at 62 FR 60973, Nov. 13, 1997]

**§ 247.3 Definitions.**

As used in this procurement guideline and the related Recovered Materials Advisory Notice(s):

* **Act** or **RCRA** means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C 6901 et seq;
* **Awards** and **plaques** refers to free-standing statues and boardlike products generally used as wall-hangings.
* **Bike racks** are free-standing or anchored units that provide a method for cyclists to secure their bicycles safely.
* **Blanket insulation** means relatively flat and flexible insulation in coherent sheet form, furnished in units of substantial area. Batt insulation is included in this term;
* **Blasting grit** is a type of industrial abrasive used to shape, cut, sharpen, polish, or finish surfaces and materials.
* **Board insulation** means semi-rigid insulation preformed into rectangular units having a degree of suppleness, particularly related to their geometrical dimensions;
* **Building insulation** means a material, primarily designed to resist heat flow, which is installed between the conditioned volume of a building and adjacent unconditioned volumes or the outside. This term includes but is not limited to insulation products such as blanket, board, spray-in-place, and loose-fill that are used as ceiling, floor, foundation, and wall insulation;
* **Carpet cushion**, also known as carpet underlay, is padding placed beneath carpet to reduce carpet wear caused by foot traffic or furniture indentation, enhance comfort, and prolong appearance.
* **Cellulose fiber loose-fill** means a basic material of recycled wood-based cellulosic fiber made from selected paper, paperboard stock, or ground wood stock, excluding contaminated materials which may reasonably be expected to be retained in the finished product, with suitable chemicals introduced to provide properties such as flame resistance, processing and handling characteristics. The basic cellulosic material may be processed into a form suitable for installation by pneumatic or pouring methods;
* **Cenospheres**, a naturally-occurring waste component of coal fly ash, are very small, inert, lightweight, hollow, “glass” spheres composed of silica and alumina and filled with air or other gases.
* **Channelizers** means highly visible barrels or drums that can be positioned to direct traffic through detours;
* **Compost** is a thermophilic converted product with high humus content. Compost can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off.
* **Delineator** means a highly visible pavement marker that can be positioned to direct traffic or define boundaries;
* **Engine lubricating oils** means petroleum-based oils used for reducing friction in engine parts;
* Federal agency means any department, agency, or other instrumentality of the Federal government; any independent agency or establishment of the Federal government including any government corporation; and the Government Printing Office;
* **Fertilizer** made from recovered organic materials is a single or blended substance, made from organic matter such as plant and animal by-products, manure-based or biosolid products, and rock and mineral powders, that contains one or more recognized plant nutrient(s) and is used primarily for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth.
* **Fiberglass insulation** means insulation which is composed principally of glass fibers, with or without binders;
* **Flexible delineator** means a highly visible marker that can be positioned to direct traffic or define boundaries and that will flex if struck by a vehicle to prevent damage to the vehicle or the delineator;
* **Flowable fill** is a low strength material that is mixed to a wet, flowable slurry and used as an economical fill or backfill material in place of concrete, compacted soils, or sand.
* **Foam-in-place insulation** is rigid cellular foam produced by catalyzed chemical reactions that hardens at the site of the work. The term includes spray-applied and injected applications such as spray-in-place foam and pour-in-place;
* **Garden hose** means a flexible tubing that conducts water to a specific location;
* **Gear oils** means petroleum-based oils used for lubricating machinery gears;
* **Hydraulic fluids** means petroleum-based hydraulic fluids;
* **Hydraulic mulch** means a mulch that is a cellulose-based (paper or wood) protective covering that is mixed with water and applied through mechanical spraying in order to aid the germination of seeds and to prevent soil erosion;
* **Hydroseeding** means the process of spraying seeds mixed with water through a mechanical sprayer (hydroseeder). Hydraulic mulch, fertilizer, a tacking agent, or a wetting agent can also be added to the water/seed mix for enhanced performance;
* **Industrial drums** are cylindrical containers used for shipping and storing liquid or solid materials.
* **Laminated paperboard** means board made from one or more plies of kraft paper bonded together, with or without facers, that is used for decorative, structural, or insulating purposes;
* **Latex paint** means a water-based decorative or protective covering having a latex binder;
* **Lawn edging** means a barrier used between lawns and landscaped areas or garden beds to prevent grass roots or weeds from spreading to the landscaped areas;
* **Loose-fill insulation** means insulation in granular, nodular, fibrous, powdery, or similar form, designed to be installed by pouring, blowing or hand placement;
* **Manual-grade strapping** refers to straps of material used with transport packaging to hold products in place on pallets or in other methods of commercial, bulk shipment. Strapping can also prevent tampering and pilferage during shipping.
* **Mats** are temporary or semipermanent protective floor coverings used for numerous applications, including home and office carpet protection, car and truck floor board protection, traction on slippery surfaces, cushion from floor hardness, and reduction of injury risk during athletic events.
* **Mineral fiber insulation** means insulation (rock wool or fiberglass) which is composed principally of fibers manufactured from rock, slag or glass, with or without binders;
* **Modular threshold ramps** are ramps used to modify existing door thresholds and other small rises to remove access barriers created by differentials in landing levels.
* **Nonpressure pipe** is pipe used to drain waste and wastewater, to vent gases, and to channel cable and conduit in various applications.
* **Office furniture** is furniture typically used in offices, including seating, desks, storage units, file cabinets, tables, and systems furniture (or “cubicles”).
* **Pallet** means a portable platform for storing or moving cargo or freight;
* **Paper** means one of two broad subdivisions of paper products, the other being paperboard. Paper is generally lighter in basis weight, thinner, and more flexible than paperboard. Sheets 0.012 inch or less in thickness are generally classified as paper. Its primary uses are for printing, writing, wrapping, and sanitary purposes. However, in this guideline, the term paper is also used as a generic term that includes both paper and paperboard.
* **Paper product** means any item manufactured from paper or paperboard. The term paper product is used in this guideline to distinguish such items as boxes, doilies, and paper towels from printing and writing papers.
* **Park benches** and **picnic tables** are recreational furniture found in parks, outdoor recreational facilities, and the grounds of office buildings and other facilities.
* **Parking stop** means a barrier used to mark parking spaces and keep parked vehicles from rolling beyond a designated parking area;
* **Perlite composite board** means insulation board composed of expanded perlite and fibers formed into rigid, flat, rectangular units with a suitable sizing material incorporated in the product. It may have on one or both surfaces a facing or coating to prevent excessive hot bitumen strike-in during roofing installation;
* **Person** means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body;
* **Phenolic insulation** means insulation made with phenolic plastics which are plastics based on resins made by the condensation of phenols, such as phenol or cresol, with aldehydes;
* **Plastic fencing** means a barrier with an open-weave pattern that can be used to control drifting snow or sand by restricting the force of wind and to provide a warning or barrier in construction and other areas;
* **Plastic lumber landscaping timbers and posts** are used to enhance the appearance of and control erosion in parks, highways, housing developments, urban plazas, zoos, and the exteriors of office buildings, military facilities, schools, and other public use areas.
* **Playground equipment** includes many components, like slides, merry-go-rounds, hand rails, etc., and is found in parks, schools, child care facilities, institutions, multiple family dwellings, restaurants, resort and recreational developments, and other public use areas.
* **Polyisocyanurate insulation** means insulation produced principally by the polymerization of polymeric polyisocyanates, usually in the presence of polyhydroxyl compounds with the addition of cell stabilizers, blowing agents, and appropriate catalyst to produce a polyisocyanurate chemical structure;
* **Polystyrene insulation** means an organic foam composed principally of polymerized styrene resin processed to form a homogenous rigid mass of cells;
* **Polyurethane insulation** means insulation composed principally of the catalyzed reaction product of polyisocyanates and polyhydroxyl compounds, processed usually with a blowing agent to form a rigid foam having a predominantly closed cell structure;
* **Postconsumer material** means a material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is a part of the broader category of recovered materials.
* **Postconsumer recovered paper** means:
	+ Paper, paperboard and fibrous wastes from retail stores, office buildings, homes and so forth, after they have passed through their end-usage as a consumer item including: Used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards and used cordage; and
	+ All paper, paperboard and fibrous wastes that enter and are collected from municipal solid waste;
* **Practicable** means capable of being used consistent with: Performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition;
* **Printer ribbon** means a nylon fabric designed to hold ink and used in dot matrix and other types of impact printers;
* **Procurement item** means any device, good, substance, material, product, or other item, whether real or personal property, which is the subject of any purchase, barter, or other exchange made to procure such item;
* **Procuring agency** means any Federal agency, or any State agency or agency of a political subdivision of a State, which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract;
* **Purchasing** means the act of and the function of responsibility for the acquisition of equipment, materials, supplies, and services, including: Buying, determining the need, selecting the supplier, arriving at a fair and reasonable price and terms and conditions, preparing the contract or purchase order, and follow-up;
* **Railroad grade crossing surfaces** are materials placed between railroad tracks, and between the track and the road at highway and street railroad crossings, to enhance automobile and pedestrian safety.
* **Rebuilt vehicular parts** are vehicular parts that have been remanufactured, reusing parts in their original form.
* **Recovered materials** means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process;
* **Recovered materials**, for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:

(1) **Postconsumer materials** such as—

1. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: Used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
2. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) **Manufacturing, forest residues, and other wastes** such as—

1. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
2. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
3. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
4. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
5. Fibers recovered from waste water which otherwise would enter the waste stream.
* **Re-refined oils** means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process;
* **Restroom divider/partition** means a barrier used to provide privacy in public restroom facilities;
* **Retread tire** means a worn automobile, truck, or other motor vehicle tire whose tread has been replaced;
* **Rock wool insulation** means insulation which is composed principally from fibers manufactured from slag or natural rock, with or without binders;
* **Roofing materials** are materials used to construct a protective cover over a structure to shield its interior from the natural elements.
* **Shower divider/partition** means a water-proof barrier used to provide privacy in public shower facilities;
* **Signage (including sign posts and supports)** is used for identification and directional purposes for public roads and highways, and inside and outside office buildings, museums, parks, and other public places.
* **Silica fume** is a waste byproduct of alloyed metal production.
* **Soaker hose** means a perforated flexible tubing that is used to deliver gentle irrigation to plants;
* **Sorbents (i.e., absorbents and adsorbents)** are materials used to retain liquids and gases in a diverse number of environmental, industrial, agricultural, medical, and scientific applications. Absorbents incorporate a substance while adsorbents gather substances on their surfaces.
* **Specification** means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references;
* **Spray-in-place insulation** means insulation material that is sprayed onto a surface or into cavities and includes cellulose fiber spray-on as well as plastic rigid foam products;
* **Spray-in-place foam** is rigid cellular polyurethane or polyisocyanurate foam produced by catalyzed chemical reactions that hardens at the site of the work. The term includes spray-applied and injected applications;
* **State** means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;
* **Structural fiberboard** means a fibrous-felted, homogenous panel made from lignocellulosic fibers (usually wood, cane, or paper) and having a density of less than 31 lbs/ft3 but more than 10 lbs/ft3. It is characterized by an integral bond which is produced by interfelting of the fibers, but which has not been consolidated under heat or pressure as a separate stage of manufacture;
* **Tire** means the following types of tires: Passenger car tires, light- and heavy-duty truck tires, high-speed industrial tires, bus tires, and special service tires (including military, agricultural, off-the-road, and slow-speed industrial);

[60 FR 21381, May 1, 1995, as amended at 62 FR 60973, Nov. 13, 1997; 65 FR 3080, Jan. 19, 2000; 69 FR 24038, Apr. 30, 2004; 72 FR 52488, Sept. 14, 2007]

**§ 247.4 Contracting officer requirements.**

Within one year after the effective date of each item designation, contracting officers shall require that vendors:

1. Certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements, and
2. Estimate the percentage of total material utilized for the performance of the contract which is recovered materials.

**§ 247.5 Specifications.**

1. RCRA section 6002(d)(1) required Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies to revise their specifications by May 8, 1986, to eliminate any exclusion of recovered materials and any requirement that items be manufactured from virgin materials.
2. RCRA section 6002(d)(2) requires that within one year after the publication date of each item designation by the EPA, each procuring agency must assure that its specifications for these items require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of these items.

**§ 247.6 Affirmative procurement programs.**

RCRA section 6002(i) provides that each procuring agency which purchases items designated by EPA must establish an affirmative procurement program, containing the four elements listed below, for procuring such items containing recovered materials to the maximum extent practicable:

1. Preference program for purchasing the designated items;
2. Promotion program;
3. Procedures for obtaining estimates and certifications of recovered materials content and for verifying the estimates and certifications; and
4. Annual review and monitoring of the effectiveness of the program.

**§ 247.7 Effective date.**

Within one year after the date of publication of any item designation, procuring agencies which purchase that designated item must comply with the following requirements of RCRA: affirmative procurement of the designated item (6002(c)(1) and (i)), specifications revision (6002(d)(2)), vendor certification and estimation of recovered materials content of the item (6002(c)(3) and (i)(2)(C)), and verification of vendor estimates and certifications (6002(i)(2)C)).

Subpart B—Item Designations

**§ 247.10 Paper and paper products.**

Paper and paper products, excluding building and construction paper grades.

**§ 247.11 Vehicular products.**

1. Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils.
2. Tires, excluding airplane tires.
3. Reclaimed engine coolants, excluding coolants used in non-vehicular applications.
4. Rebuilt vehicular parts.

[60 FR 21381, May 1, 1995, as amended at 69 FR 24038, Apr. 30, 2004]

**§ 247.12 Construction products.**

1. Building insulation products, including the following items:
2. Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
3. Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
4. Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
5. Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.
6. Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
7. Cement and concrete, including concrete products such as pipe and block containing:
8. Coal fly ash;
9. Ground granulated blast furnace slag (GGBF);
10. Cenospheres; or
11. Silica fume from silicon and ferrosilicon metal production.
12. Carpet made from polyester fiber made from recovered materials for use in moderate-wear applications such as single-family housing and similar wear applications.
13. Floor tiles and patio blocks containing recovered rubber or plastic.
14. Shower and restroom dividers/partitions containing recovered plastic or steel.
15. (1) Consolidated latex paint used for covering graffiti; and

(2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.

1. Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.
2. Flowable fill containing coal fly ash and/or ferrous foundry sands.
3. Railroad grade crossing surfaces made from cement and concrete containing fly ash, recovered rubber, recovered steel, recovered wood, or recovered plastic.
4. Modular threshold ramps containing recovered steel, rubber, or aluminum.
5. Nonpressure pipe containing recovered steel, plastic, or cement.
6. Roofing materials containing recovered steel, aluminum, fiber, rubber, plastic or plastic composites, or cement.

[60 FR 21381, May 1, 1995, as amended at 62 FR 60974, Nov. 13, 1997; 65 FR 3081, Jan. 19, 2000; 69 FR 24038, Apr. 30, 2004]

**§ 247.13 Transportation products.**

1. Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.
2. Parking stops made from concrete or containing recovered plastic or rubber.
3. Channelizers containing recovered plastic or rubber.
4. Delineators containing recovered plastic, rubber, or steel.
5. Flexible delineators containing recovered plastic.

[60 FR 21381, May 1, 1995, as amended at 62 FR 60974, Nov. 13, 1997]

**§ 247.14 Park and recreation products.**

1. Playground surfaces and running tracks containing recovered rubber or plastic.
2. Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.
3. Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.
4. Playground equipment containing recovered plastic, steel, or aluminum.

[60 FR 21381, May 1, 1995, as amended at 62 FR 60974, Nov. 13, 1997; 65 FR 3081, Jan. 19, 2000]

**§ 247.15 Landscaping products.**

1. Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.
2. Compost made from recovered organic materials.
3. Garden and soaker hoses containing recovered plastic or rubber.
4. Lawn and garden edging containing recovered plastic or rubber.
5. Plastic lumber landscaping timbers and posts containing recovered materials.
6. Fertilizer made from recovered organic materials.

[60 FR 21381, May 1, 1995, as amended at 62 FR 60974, Nov. 13, 1997; 65 FR 3081, Jan. 19, 2000; 72 FR 52488, Sept. 14, 2007]

**§ 247.16 Non-paper office products.**

1. Office recycling containers and office waste receptacles.
2. Plastic desktop accessories.
3. Toner cartridges.
4. Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.
5. Plastic trash bags.
6. Printer ribbons.
7. Plastic envelopes.
8. Plastic clipboards containing recovered plastic.
9. Plastic file folders containing recovered plastic.
10. Plastic clip portfolios containing recovered plastic.
11. Plastic presentation folders containing recovered plastic.

(1) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

[60 FR 21381, May 1, 1995, as amended at 62 FR 60974, Nov. 13, 1997; 65 FR 3081, Jan. 19, 2000; 69 FR 24038, Apr. 30, 2004]

**§ 247.17 Miscellaneous products.**

1. Pallets containing recovered wood, plastic, or paperboard.
2. Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.
3. Industrial drums containing recovered steel, plastic, or paper.
4. Awards and plaques containing recovered glass, wood, paper, or plastic.
5. Mats containing recovered rubber and/or plastic.
6. (f)(1) Non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum.
7. (2) Sign supports and posts containing recovered plastic or steel.
8. Manual-grade strapping containing recovered steel or plastic.
9. Bike racks containing recovered steel or plastic.
10. Blasting grit containing recovered steel, coal and metal slag, bottom ash, glass, plastic, fused alumina oxide, or walnut shells.

[62 FR 60974, Nov. 13, 1997, as amended at 65 FR 3081, Jan. 19, 2000; 69 FR 24038, Apr. 30, 2004]