

This document is a sample and is not intended to be all inclusive. This document does not replace pre-issuance contracts with caterers and Food Service Management Companies as required by Arizona Department of Education (ADE). The School Food Authority is ultimately responsible to ensure that the procedures comply with all Federal Regulations, State Procurement Code and Regulations, and local procurement policies.

CHILD NUTRITION PROGRAMS PROCUREMENT PROCEDURES

Insert SFA/Sponsor Name **Insert CTD #**

The procurement procedures contained on the following pages will be implemented on **Insert Date** and stay in effect until amended. All procurement must adhere to free and open competition. Sponsors must retain all documentation for procurement per regulations.

New procurement procedures do not need to be developed every year. However, an annual review of procedures is suggested to assure its relevance to current procedures.

PROCUREMENT PROCEDURES

Insert SFA/Sponsor Name will purchase goods, products, and/or services for use in the Child Nutrition Programs (CNP) in compliance with 2 CFR Part 200 and State Law using the procedures outlined as follows.

The primary purpose of procurement procedures is to ensure that open and free competition exists to the maximum extent possible. The procurement process practiced by the CNP Sponsor must not restrict or eliminate competition (2 CFR Part 200.139(a)(1-7)). For example, description of goods, products, and/or services to be procured should not contain features that unduly restrict competition. Competition helps assure that goods, products, and/or services will be obtained that best meets the needs of the CNP.

It will be the responsibility of the **Insert Title/Position** to evaluate the procurement needs and forecast the amounts to be purchased so the correct method of procurement will be followed.

The **Insert Title/Position** will perform a cost analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including modifications. (2 CFR Part 200.323(a))

The **Insert Title/Position** will be responsible to ensure all SFA procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.

The **Insert Title/Position** will be responsible for maintaining all procurement documentation.

The Child Nutrition Program Sponsor must take all necessary affirmative steps to assure minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (2 CFR Part 200.321)

The Child Nutrition Program Sponsor is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. (2 CFR Part 200.318(e)) These agreements are monitored by the State Agency. Please contact the Contracts Management Officer for further information.



The Child Nutrition Program Sponsor alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. (2 CFR 200.318(k))

PROCUREMENT THRESHOLDS

The Simplified Acquisition Threshold for **Insert SFA/Sponsor Name** is: *<choose one and delete other options>*
(\$250,000 - Federal simplified acquisition threshold), or
(\$100,000 - Arizona School District simplified acquisition threshold), or
(\$ _____ - Local simplified acquisition threshold)

***Micro-Purchase Procedures** are for purchases not exceeding \$10,000.

***Small Purchase Procedures** are for purchases greater than \$10,000 but not exceeding the simplified acquisition threshold listed above.

***Formal Purchase Procedures (Sealed Bids or Competitive Proposals)** are for purchases in excess of the simplified acquisition threshold listed above.

METHODS OF PROCUREMENT

The following methods of procurement are to be used based on the aggregate dollar amount of supplies or services being purchased as outlined in 2 CFR 200.318-.326.

A. Procurement by Micro-Purchase Procedures

This method applies to the purchase of supplies or services when the aggregate dollar amount of the purchase does not exceed the micro-purchase threshold. To the extent practicable, micro-purchases must be distributed equitably among qualified suppliers. These purchases may be awarded without soliciting competitive quotes if the entity considers the price reasonable.

- The **Insert Title/Position** will be responsible for distributing purchases equitably among potential vendor/contractors.
- The **Insert Title/Position** will be responsible for documentation of records of the purchase, name of vendor/contractor, price, and the written specifications.
- The **Insert Title/Position** will be responsible for documentation that the actual product was received.
- The **Insert Title/Position** is required to sign documentation, confirming a review and the approval of the purchase of the goods, products, and/or services.
- The **Insert Title/Position** will be responsible for assuring that food purchased meets the Buy American Provision.

B. Procurement by Small Purchase Procedures

This method applies to the purchase of supplies or services when the aggregate dollar amount is greater than \$10,000 but less than the Sponsor's simplified acquisition threshold.

- The **Insert Title/Position** is the Sponsor's authorized small procedure purchaser.
- The **Insert Title/Position** will be responsible for developing written specifications. The same information must be provided to all vendors/contractors. Specifications should be detailed and specific.
- The **Insert Title/Position** will be responsible for contacting potential vendors/contractors when price quotes are needed. Price quotes may be obtained in-person, by telephone, online, catalog, or other printed pricing.
- The price quotes are to remain confidential information until the actual purchase has been made.
- Quotes will be awarded by the **Insert Title/Position**. Quotes awarded will be to the vendor/contractor with the lowest price and the ability to meet the requirements of the specified product/service. Price must be the most important factor.
- The **Insert Title/Position** will be responsible for documentation of records to show selection of vendor/contractor, reasons for selection, names of all vendors/contractors contacted, price quotes from each vendor/contractor, and written specifications.
- The **Insert Title/Position** will be responsible for documentation that the actual product specified is received.
- The **Insert Title/Position** is required to sign documentation, confirming a review and the approval of the purchase of the goods, products, and/or services.
- The **Insert Title/Position** will be responsible for including the Buy American Provision language in the solicitation/contract and for assuring that food purchased meets the Buy American Provision.

C. Procurement by Formal Purchase Procedures (sealed bids or competitive proposals)

This method applies to the purchase of supplies or services when the aggregate dollar amount is in excess of the Sponsor's simplified acquisition threshold.

Procurement by sealed bids is also referred to as an Invitation for Bid (IFB) and procurement by competitive proposals is also referred to as a Request for Proposal (RFP). IFB and RFP will be utilized from this point forward.

- The **Insert Title/Position** is the Sponsor's authorized formal procedure purchaser.
- The **Insert Title/Position** will be responsible for the required advertisement for all purchases over the most restrictive simplified acquisition threshold to publicize the intent of the Child Nutrition Program Sponsor to purchase needed items. The announcement (advertisement or legal notice) of the IFB or RFP will contain a general description of items to be purchased, the deadline for submission of sealed IFBs and RFPs, and the address where complete specifications and other procurement documents may be obtained. The

announcement will be placed in a location that will ensure free an open competition (SFA website, local newspaper, or social media platforms). The advertisement should run for an adequate length of time.

- The **Insert Title/Position** will be responsible for the development of written specifications or descriptions for procurements. The developer will be prohibited from submitting bids or proposals for such products or services. Each vendor/contractor will be given an opportunity to bid on the same specifications.
- If any potential contractor is in doubt as to the true meaning of the specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the **Insert Title/Position**.
- The IFB or RFP will clearly define the purchase conditions and required procurement and program clauses. The following conditions and clauses shall be addressed in the solicitation/contract documents:
 1. Contract time period
 2. Statement of the Sponsor responsibility for all contracts awarded
 3. Date, time, and location of bid/proposal opening
 4. Method of informing vendor/contractor of bid acceptance or rejection
 5. Delivery schedule
 6. Requirements (terms and conditions) set forth which bidder must fulfill in order for bid to be evaluated
 7. Benefits to which the Child Nutrition Program Sponsor will be entitled if the contractor cannot or will not perform as required
 8. Statement assuring positive efforts will be made to involve minority, women, and small business
 9. Statement regarding the return of purchase incentives, discounts, rebates, and credits to the Sponsor's non-profit Child Nutrition account
 10. Statement that Contract and/or purchase orders may be issued for firm fixed prices after formal bidding process
 11. Price adjustment clause based on appropriate standard or cost index
 12. Method of evaluation and type of contract to be awarded
 13. Method of award announcement and effective date (if intent to award is required by State or local procurement requirements)
 14. Specific bid protest procedures including contact information of person and address and the date by which a written protest must be received
 15. Provision requiring access by duly authorized representatives of the School Food Authority, State Agency, United State Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts
 16. Method of shipment or delivery upon contract award
 17. Description of process for enabling vendors to receive or pick up orders upon contract award
 18. Statement that the contractor shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by the contractor
 19. Signed statement of non-collusion
 20. **Program Regulations**

“The contractor shall be in conformance with the applicable portions of the SFA's agreement under the program. The contractor will conduct program operations in accordance with 7CFR Parts 210, 215, 220, 225, and 250.

The contractor shall provide products that meet the Public Law 111-296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). The contractor’s products shall meet grade level caloric, sodium, saturated fat, and trans-fat requirements.”

21. Affordable Care Act

“The contractor understands and agrees that it shall be solely responsible for compliance with the patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act “ACA”). The contractor shall bear sole responsibility for providing health care benefits for its employees who provide services to the SFA as required by State or Federal law.”

22. Buy American Provision

“The contractor shall purchase, to the maximum extent practicable, domestic agricultural commodities or products substantially processed in the United States, in accordance with 7CFR§210.21(d) and 7CFR§220.16(d). “Substantially” means the final processed product contains over 51% domestically grown agricultural commodities. This provision applies to all food purchases paid from the nonprofit school food services account. There are limited exceptions to this provision which allow for the purchase of products not meeting the “domestic” standard as described above (“non-domestic”) in circumstances when use of domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food products should be considered.

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. Exceptions include: (1) The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality, or (2) competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

To be considered for the alternative or exception, the request must be submitted in writing to a designated official, a minimum of ____ <insert number of days> days in advance of delivery. The request must include: (1) the alternative substitutes that are domestic and meet the required specifications, with price of the domestic food alternative substitute and the availability of the domestic alternative substitute in relation to quantity ordered, and (2) the reason for exception, whether limited/lack of availability or price. If price, include the price of the domestic food product and the price of the non-domestic product that meets the required specifications of the domestic product.”

(Only applies to food purchases/contracts)

23. Certificate of Independent Price Determination

“The contractor admits that all prices in this Offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor certification regarding non-collusion.”

24. Civil Rights Compliance

“In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and



employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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

25. Energy Policy and Conservation Act

“The contractor shall meet the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act. (Pub. L. 94–163, 89 Stat. 871.)”

26. Equal Employment Opportunity

“The contractor shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapters 60). “

27. Record Keeping

“The books and records of the contractor pertaining to operations under this Agreement shall be available to the SFA at any reasonable time. These records are subject to inspection or audit by representatives of the SFA, State Agency, the US Department of Agriculture, and the US General Accounting Office at any reasonable time and place.

The SFA shall maintain such records, for a period of not less than five (5) years after the final day of the contract, or longer if required for audit resolution (A.R.S §35-214). 7CFR§210.23 and 2 CFR Part 200.318(i).”

28. Invoicing

“The contractor fully discloses all discounts, rebates, allowances and incentives received by the contractor from its suppliers. If the contractor receives a discount, rebate, allowance, or incentive from any supplier, the contractor must disclose and return to the SFA the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the SFA. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify



the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. 7CFR§210.21(f)(1)(iv).

No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost-reimbursable contract that fails to include the requirements of 7CFR§210.21, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs. 7CFR§210.21(f)(2)"

29. **E-Verify Requirement**

"The contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. §23-214, Subsection A. (That subsection reads: After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)"

30. For contracts over \$2,500:

Contract Work Hours and Safety Standard Act

"The contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5)."

31. For contracts over \$10,000:

Termination Clause

"The contract may be terminated for cause and for convenience by the SFA. Appendix II to 2 CFR Part 200." *(Only applies to contracts over \$10,000)*

32. For contracts over \$25,000:

Debarment, Suspension, Ineligibility and Voluntary Exclusion

"The contractor shall certify that they have not been debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under executive order 12549 and 12689. The contractor shall comply with regulations implementing Office of Management and Budget Guidance in Non-Procurement Debarment and Suspension codified at 2 CFR Part 180 and 2 CFR Part 417. These regulations restrict transactions with certain parties that are debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs or activities." *(Only applies to contracts over \$25,000)*

33. For contracts over \$100,000:

Certification Regarding Lobbying

"Pursuant to 31 USC 1352, the contractor must submit a certification regarding lobbying which conforms in substance with the language provided in CFR Part 200.450. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative Agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions." *(Only applies to contracts over \$100,000)*

Disclosure of Lobbying Activities

"Pursuant to Byrd Anti-Lobbying Amendment 31 USC 1352, the contractor must disclose lobbying activities in connection with school nutrition programs. If there are

material changes after the initial filing, updated reports must be submitted on a quarterly basis.” 7CFR§3018.100 *(Only applies to contracts over \$100,000)*

Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulation

“The contractor will comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations which prohibit the use, under nonexempt federal contracts, grants or loans to facilities included on the EPA List of Violating Facilities. The SFA will report all violations to ADE and to the USEPA Assistant Administrator for Enforcement.” *(Only applies to contracts over \$100,000)*

34. For building projects:

Copeland “Anti-Kickback” Act

All contracts and sub grants in excess of \$2000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act.

Davis-Bacon Act.

The contractor shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).

35. Optional:

Applying a Geographical Preference. 7 CFR Part 210.21(g) (Only use if applicable)

- A. The SFA seeks to increase its purchase of seasonal, minimally processed fresh fruits and raw vegetables as part of the Farm to School Program. Reasons for purchasing local products include the potential cost savings, nutrition education for students, and quality of product.
- B. The SFA is interested in the following locally grown products: <Insert items of interest/specifications here>
- C. The contractor will make every effort to provide the SFA with locally grown products according to the definitions below.
 - 1. Locally Grown: <Insert parameters of SFA’s local definition here> [i.e. Grown within 200 miles or Arizona Grown]
 - 2. Minimally processed: Includes refrigerating, adjusting size (peeling, slicing, dicing, cutting, chopping), washing, packaging and adding ascorbic acid or other preservatives to prevent oxidation or produce (as described in USDA’s Final Rule of Geographic Preference).
- D. All products designated under the geographic preference clause shall be labeled with its designating origin (grower name and address/state or area of production) on each case/invoice delivered.
- E. Locally grown products should be generally free from insect damage and decay (flexible on grading for produce only per USDA guidance). Produce items are to be rinsed, cleaned and packed in appropriate commercial produce packaging such as waxed cardboard boxes or sanitary/reusable bins.

- The **Insert Title/Position** will be responsible for securing all bids or proposals.
- Contractors will be selected using the Sponsor’s evaluation criteria such as:
 - Does the vendor’s product meet the required specifications?
 - Does the vendor’s delivery schedule meet the Sponsor’s needs?



- Other criteria that each Sponsor determines are of value to them.
- Price will be the most important factor used in awarding contracts.
- In awarding a competitive negotiation (RFP), a description of award criterion (Ex.: price, quality, delivery, service, etc.) will be described in the solicitation (IFB/RFP) and included in the evaluation materials. Price alone is not the sole basis for award, but remains the primary consideration when awarding a contract. Following evaluation and negotiations, a firm fixed price or cost reimbursable contract is awarded.
- The contracts will be awarded to the lowest price responsible bidder/proposer whose bid or proposal is responsive to the invitation and is most advantageous to the Sponsor, price, and other factors considered with price as the primary factor. Any and all bids or proposals may be rejected in accordance with law.
- The **Insert Title/Position** is required to sign on the bid tabulation of competitive sealed bids or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.
- The **Insert Title/Position** will review the procurement system to ensure compliance with applicable laws.
- The **Insert Title/Position** will be responsible for documentation the actual product specified is received.
- The contractor must inform the **Insert Title/Position** when a product is not available. Any time an accepted item is not available, the **Insert Title/Position** will select the acceptable alternate.
- The **Insert Title/Position** will be responsible for including the Buy American Provision language in the solicitation/contract and for assuring that food purchased meets the Buy American Provision.
- The **Insert Title/Position** will be responsible for Buy American exception documentation. In the event a non-domestic agricultural product is to be provided to the Sponsor, the contractor must obtain, in advance, the written approval of the product. The documentation must include the reason an accepted item was unavailable, and to the procedure used in determining acceptable alternates. Documentation will be available for audit and review.
- The Sponsor shall agree to retain all books, records and other documents relative to the award of the contract for five (5) years after final payment. Specifically, the Sponsor shall maintain, at a minimum, the following documents:
 1. Written rationale for the method of procurement;
 2. A copy of the original solicitation;
 3. The selection of contract type;
 4. The bidding and negotiation history and working papers;
 5. The basis for contractor selection;
 6. Approval from the State agency to support a lack of competition when competitive bids or offers are not obtained;
 7. The basis for award cost or price;
 8. The terms and conditions of the contract;
 9. Any changes to the contract and negotiation history;
 10. Billing and payment records;
 11. A history of any contractor claims; and

12. A history of any contractor breaches.

D. Procurement by Noncompetitive Proposals

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:

1. The item is available only from a single source;
2. The public emergency will not permit a delay resulting from competitive solicitation;
3. The Federal awarding agency expressly authorizes noncompetitive proposals in response to a written request; or
4. After solicitation of a number of sources, competition is determined inadequate.

If items are available only from a single source when the award of a contract is not feasible under simplified acquisition purchase (IFB/RFP), noncompetitive negotiation procedures will be used: (must have prior approval from State agency before executing. 2 CFR Part 200.320(f)(3))

- Written Specifications will be prepared and provided to the vendor/contractor.
- The **Insert Title/Position** will be responsible for the documentation of records to fully explain the decision to use the noncompetitive negotiation. The records will be available for audit and review.
- The **Insert Title/Position** will be responsible for documentation that the actual product or service specified was received.
- The **Insert Title/Position** will be responsible for reviewing the procedures conducted to be certain all requirements for using single source or noncompetitive negotiation are met. (2 CFR Part 200.320(f))
- The **Insert Title/Position** will maintain a record of noncompetitive negotiation purchase. The record of noncompetitive purchases shall include, at a minimum, the following:
 1. Item name
 2. Dollar amount
 3. Vendor/contractor, and
 4. Reason for noncompetitive procurement
- If it is necessary to make a one-time emergency procurement to continue service or obtain goods, the purchase shall be made, and a log of all such purchases shall be maintained by the **Insert Title/Position**. The following emergency procedures shall be followed. All emergency procurements shall be approved by the **Insert Title/Position** and cannot be extended beyond the period of time the emergency response is required and normal procurement practices can be conducted. At a minimum, the following shall be documented:
 1. Item name
 2. Dollar amount
 3. Vendor/contractor, and
 4. Reason for emergency

GENERAL PROCUREMENT PROCEDURES

A. Market Basket Analysis

- Market Basket Analysis may be used to review bids and award the contract using an established, representative sample of goods as long as the published solicitation includes language that allows for this type of an evaluation.
- Market Basket Analysis is not acceptable for awarding equipment or service contracts, such as pest control, as service contracts do not lend themselves to this type of evaluation.
- In determining the goods to be used for evaluating the award, a representative sample must be selected. It is recommended that the aggregate value be 75% or more of the estimated *value* of the contract to be awarded.
- When using market basket analysis, pricing must be obtained for the remaining listed goods that were not included in the analysis prior to the final award. The pricing of these miscellaneous goods must be reasonable.
- The Market Basket Analysis sample is established to represent 75% of the total estimated value of the contract to be awarded. The most recent velocity/sales report from the current supplier will be used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, the list of goods to be purchased under a solicitation will include the top [insert number] goods purchased by dollar volume representing the 75% threshold.
- Market Basket Analysis does not apply to micro-purchases.

B. Cooperative Purchasing Agreements/Agents/Third Party Services

- The **Insert Title/Position** will ensure all costs paid from the nonprofit food service account are necessary, reasonable, allocable, and otherwise allowable per 2 CFR 200.403 and the applicable cost principles in 2 CFR 200, subpart E.
- The **Insert Title/Position** will ensure procurements by Cooperative Groups, Agents, and Third Parties are conducted in a manner maximizing full and open competition consistent with Federal procurement standards in 2 CFR 200.318-.326 and in applicable Program regulations.