

# FEDERAL PROCUREMENT FOR CHILD NUTRITION PROGRAMS



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# **FEDERAL PROCUREMENT TOPICS TO BE DISCUSSED**

**I. FEDERAL PROCUREMENT REGULATIONS**

**II. FEDERAL PROCUREMENT PRINCIPLES**

**III. FEDERAL PROCUREMENT PROCEDURES**



# **I. FEDERAL PROCUREMENT REGULATIONS**



# PROCUREMENT STANDARDS

## 2 C.F.R. § 200.317-326

- Effective as of December 26, 2014
- “All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.” (See 2 C.F.R. § 200.317)
- Basic Considerations for allowable costs are found in 2 C.F.R. § 200.402 – 200.411

# **FEDERAL REGULATIONS FOR CHILD NUTRITION PROGRAMS**

- **7 C.F.R. § 210: National School Lunch Program**
- **7 C.F.R. § 210.21: Procurement**

# FEDERAL PROCUREMENT REGULATIONS

- Federal regulations apply when procurement uses Federal funds
- When money is deposited into CNP Accounts they become Federal Funds
- Only defer to state or local regulations if they are more restrictive
- Less restrictive laws or exemptions do not apply when using Federal funds

## **II. FEDERAL PROCUREMENT PRINCIPLES**

- Competition
- Forecasting
- Specifications
- Required Provisions
- Documentation

# FULL AND OPEN COMPETITION

- This is the most important principle of procurement (see 2 C.F.R. § 200.319)
- Ensures that all potential suppliers are on an equal playing field and have the same opportunity to compete
- Two primary goals:
  - 1) Have as many suppliers as possible respond to every solicitation
  - 2) Provide the highest quality of goods and services at the lowest possible price



# FORECASTING

- Estimating the goods and services needed in specified areas for the coming year
- Identify the products and quantities to purchase and estimate the total costs
- Use data from previous school years
- Forecasting higher quantities should result in lower bid prices

# SPECIFICATIONS

- Concise statement of a set of requirements to be satisfied (Institute of Child Nutrition)
- Clear and accurate description of technical requirements and terms, such as delivery and packaging
- Must not be overly restrictive to competition
- When using a brand name in a specification you must state “brand name or equal”
- Geographic Preference applies to local agricultural products that retain their inherent character

# REQUIRED PROVISIONS

- All contracts require the standard Federal provisions from 2 C.F.R. Part 200 Appendix II
- “Buy American” provisions are required in all specifications 7 C.F.R. § 210.21
- Termination language
- USDA Non-Discrimination Statement
- Any state or local required provisions

# DOCUMENTATION

- Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years. 2 C.F.R. § 200.333
- SFA's records shall be retained for a period of 3 years after submission of the final claim for Reimbursement for the fiscal year. If audit findings have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit. 7 C.F.R. § 210.23(c)

# III. FEDERAL PROCUREMENT PROCEDURES

- Aggregate Purchasing Thresholds
- Micro Purchases
- Informal Small Purchases
- Formal Sealed Bid Purchases
- Sole Source
- Emergency Procurement
- Purchasing Cooperatives

# AGGREGATE PURCHASING THRESHOLDS

- This is the combined total amount per purchase per school year, that determines which method of procurement is required
- FNS defines aggregate as not exceeding the procurement threshold
- Unlawfully splitting bids occurs when a purchase is divided up to stay within a purchasing threshold in order to avoid additional requirements

# MICRO PURCHASES

- The aggregate total of an independent transaction is so small that quotes are not required
- Share among vendors as much as possible
- Under \$10,000 - Federal Threshold
- Code of Alabama does not address this for SFA's
- Defer to any stricter local threshold if applicable

# INFORMAL SMALL PURCHASES

- Informal and competitive solicitation:
  - 1) Written specifications
  - 2) Requires quotes
  - 3) Bid evaluation
  - 4) Award to the most responsible bidder with the lowest price
  - 5) Manage the contract
- Under \$250,000 - Federal Threshold
- Under \$15,000 - Alabama Threshold
- Which Threshold do we defer to?



# FORMAL SEALED BID PURCHASES

- Formal and competitive sealed bid solicitation:
  - 1) Written specifications
  - 2) Publicly announce/advertise the IFB/RFP
  - 3) Public and sealed bid opening
  - 4) Award to the most responsible bidder with the lowest price
  - 5) Manage the contract
- Over \$250,000 - Federal Threshold
- Over \$15,000 - Alabama Threshold
- Which Threshold do we defer to?

# FARM-TO-SCHOOL PROCUREMENT ACT

- Code of Alabama § 16-1-46 and 16-13B-2(a)(14)
- Increases Alabama's Small Purchase Threshold to match the Federal Simplified Acquisition Threshold for Unprocessed Agricultural Products
- **This exemption is for Unprocessed Agricultural Products only!**

# NONCOMPETITIVE PROPOSALS - FEDERAL

- 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 exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - 3) The Federal awarding agency or pass-through entity 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.
- 2 C.F.R. § 200.320(f)(1-4)

# SOLE SOURCE - ALABAMA

- Evidence is required showing that no other vendor offers substantially equivalent goods or services required.
- All information substantiating the use of a sole source specification is documented in writing and is filed into the project file.
- Code of Alabama § 16-13B-7 and 41-16-75

# EMERGENCY PROCUREMENT- ALABAMA

- In case of emergency affecting public health, safety or convenience, so declared in writing by the awarding authority, setting forth the nature of the danger to public health, safety or convenience involved in delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. Such action and the reasons therefor shall immediately be made public by the awarding authority.
- Code of Alabama § 41-16-53

# PURCHASING COOPERATIVES

- The purpose of a Purchasing Cooperative is to allow SFA's to use their collective buying power and expertise of the group to obtain the highest quality products at the best price
- Both state and Federal laws recognize these
- Group Buying Organization's (GBO) are often mistaken for a Coop but are not recognized by state and Federal regulations
- GBO's may be used as sources for competition
- GBO's are not exempt from Federal Threshold Procurement Regulations

# PURCHASING COOP VERSUS GBO

## PURCHASING COOP:

- Purchases for themselves
- Non-profit
- Members are CNP Program Operators
- Receives rebates and discounts directly
- Fixed price award on solicited items

## GBO:

- Buys on behalf of others
- For-profit
- Members can have private status
- Often keep rebates and discounts
- Fluctuating prices on a cost plus percentage of non-solicited items

# Procurement Ethics

- Each SFA is responsible for complying with procurement rules and regulations
- Each SFA must perform its own documented and competitive procurement
- School food service is already scrutinized
- Unethical practices can damage the reputations of the person and organization
- Procurement violations can lead to possible termination and legal consequences



# RESOURCES

- **Procuring Local Foods for Child Nutrition Programs from USDA**
- **Procurement in the 21<sup>st</sup> Century** [www.theicn.org](http://www.theicn.org)  
from the Institute of Child Nutrition
- **Code of Federal Regulations** [www.ecfr.gov](http://www.ecfr.gov)
- **Code of Alabama** [www.legislature.state.al.us](http://www.legislature.state.al.us)

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