California Department of Education August 2020

Nutrition Services Division

# Code of Conduct and Procurement Procedure Checklist

## Background

Title 2, *Code of Federal Regulations* (2 *CFR*), Part 200, requires all Child Nutrition Programs (CNP) to develop and maintain two procurement documents: (1) a written code of conduct, and (2) procurement procedures.

## Purpose

The purpose of this checklist is to provide agencies with a list of components to consider for inclusion in procurement documents. Please note that while an agency may not include some of the components listed below in their written code of conduct and procurement procedures, there may be other procurement documents in which certain components are required. The California Department of Education (CDE) recommends that agencies consult with their local counsel to determine which of the “if-applicable” components are required for your procurement documents. Agencies must retain all procurement documents to ensure they are available upon request by the CDE.

For further guidance on the written code of conduct requirements and procurement procedures, refer to the following documents:

* 2 *CFR*, sections 200.318–200.326 on the Electronic *Code of Federal Regulations* web page at <https://www.ecfr.gov/cgi-bin/text-idx?SID=39bb9fc3a6953a2a75bbac8d34069212&mc=true&node=sg2.1.200_1316.sg3&rgn=div7>.
* U.S. Department of Agriculture (USDA) Policy Memorandum SP 03-2017 Draft Tool for Local Agency Procurement Reviews for School Food Authorities (SFA) in School Year 2016–17: Revised web page at <https://www.fns.usda.gov/draft-tool-local-agency-procurement-reviews-school-food-authorities-sy2016-2017-revised>.
* USDA Policy Memo SP 38-2017 Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program (NSLP) web document at <https://fns-prod.azureedge.net/sites/default/files/cn/SP38-2017os.pdf>.

## Contact

For technical assistance, please contact the CDE Procurement Resources Unit by email at SFSCONTRACTS@cde.ca.gov.

| **Code of Conduct Components** | **Include in Written Documents** | **Is This Applicable to my Agency?** |
| --- | --- | --- |
| **Conflicts of Interest and Disciplinary Action** (2 *CFR*, Section 200.318[c][1]; California *Government Code* [*GC*],sections 1090 and 87100): Ensure that the code of conduct addresses conflicts of interest and regulates the actions of employees engaged in the selection, award, and administration of contracts. The code of conduct should ensure that employees, officers, or agents do not participate in the selection, award, or administration of a contract supported by a federal award if they have a real or apparent conflict of interest. The written code of conduct must define a conflict of interest and include disciplinary action for violations. | Required for all Agencies | Yes |
| **Gratuities, Favors, or Gifts** (2 *CFR*, Section 200.318[c][1]): Describe:(1) The agency’s process for prohibiting the solicitation of gratuities, favors, or anything of monetary value from contractors; (2) Whether the agency prohibits the acceptance of gratuities, favors, or anything of monetary value from contractors **or** the agency allows the acceptance of gratuities, favors, or anything of monetary value in situations in which financial interest or gratuity is not substantial or the gift is an unsolicited item of nominal value, and (3) The definition of nominal value for agencies that allow the acceptance of gifts. | Required for all Agencies | Yes |
| **Organizational Conflicts of Interest** (2 *CFR*, Section 200.318[c][2]):If an agency has a parent, affiliate, or subsidiary and the agency is not a state, local government, or Indian tribe, describe how the agency will manage relationships that may prohibit the ability to be impartial in conducting a procurement action involving a related organization. | n/a | Yes / No |
| **Statement of Economic Interest** (*GC*, Section 87302): Develop procedures which require public employees who make or influence governmental decisions to submit a Statement of Economic Interest, Form 700, within designated time frames. | n/a | Yes / No |

| Procurement Procedures Components | **Is This Applicable to my Agency?** |
| --- | --- |
| **Duplication of Goods or Services** (2 *CFR*, Section 200.318[d]): Describe the process for ensuring that there is no acquisition of unnecessary or duplicate goods or services. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. | Required for all Agencies |
| **Maintenance of Records** (2 *CFR*, Section 200.318[i]):Describe the process for ensuring that records are maintained to detail the history of procurement. The records will include, but are not limited to: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.Records should be maintained for the duration of the contract, including all extensions, plus three years; or longer if required for audits. | Required for all Agencies |
| **Buy American Provision** (Title 7, *Code of Federal Regulations* [7 *CFR*], sections 210.21[d] and 220.16[d]; USDA Policy Memo SP 38-2017): The federal Buy American Provision supports the mission of CNPs, which is to serve children nutritious meals in schools and support American agriculture.Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105–336) added a provision, Section 12(n) to the National School Lunch Act (NSLA) (42, *United States Code* 1760[n]), requiring SFAs to purchase, to the maximum extent practical, domestic commodities or products. Section 12(n) of the NSLA defines **domestic commodity or product** as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. **Substantial** means that over 51 percent of the final processed product consists of agricultural commodities that are grown domestically. Products from Guam, American Samoa, the Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States. Ingredients used to flavor, enhance, or prepare products (e.g., condiments, salad dressing) must also comply with the Buy American requirement **only if** the first ingredient (or second after water) is one of the five components that contribute to a reimbursable meal. If the first ingredient in these products is not one of the five components that contribute to a reimbursable meal, the product does not have to comply with the Buy American requirement. For example, catsup with tomato paste as the first ingredient must comply with the Buy American requirement since tomato paste is creditable as a red/orange vegetable, **even though catsup is not a creditable item**. Mustard with distilled white vinegar as the first ingredient does not need to comply with the Buy American requirement since vinegar is not a component that contributes to a reimbursable meal. Additionally, nonagricultural products such as paper, water, packaging, and labor do not need to comply with the Buy American requirement.When funds are used from the nonprofit school food service account, SFAs must ensure that procurement transactions for food products on the commercial market comply with the Buy American Provision (7 *CFR*, sections 210.21[d] and 220.16[d]), whether food products are purchased by SFAs or entities that are purchasing on their behalf.SFAs **must** also ensure that solicitation and contract language includes the requirement to purchase, to the maximum extent practical, domestic agricultural commodities and products. The Buy American Provision must also be included in the SFA’s documented procurement procedures, along with the requirement to retain records documenting any exceptions. Implementation of the Buy American Provision by the SFA should also be done by:* Including domestic requirements in bid specifications
* Monitoring the contract
* Verifying cost and availability of domestic and nondomestic foods using data in the USDA Agricultural Marketing Service’s (AMS) weekly market report on the USDA AMS Run a Market Report web page at <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>

For more information on the Buy American Provision, including additional ways the SFA should implement the requirement, select the Procurement tab on the CDE Procurement in SNP web page at <http://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp> and access USDA Policy Memo SP 38-2017, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program, accessible on the USDA School Meals Policy web page at <https://www.fns.usda.gov/school-meals/policy>.  | Required for School Nutrition Program (SNP) Operators |
| **Exceptions to the Buy American Provision** (USDA Policy Memo SP 38-2017): Describe the process for ensuring that the vendor will document exceptions to providing domestic agricultural food components. Exception forms and instructions are available on the Child Nutrition Information and Payment Systems, Download Forms, Form ID Numbers PRU 10 and 10a. | Required for SNP Operators |
| **Buy American Provision for all processed end products** (USDA Policy Memo SP 38-2017): Describe the process for ensuring that the vendor provides specific information about the percentage of United States content in any processed end product.  | Yes / No |
| **Authorization Title Page** Include the date the procedures are effective, the name, title, signature of the authorized representative, and the date of signing. | Yes / No |
| **Surplus Property** (2 *CFR*, Section 200.318[f]): Describe whether consideration is given to purchasing government surplus property in lieu of purchasing new equipment. If so, include the process for conducting this type of procurement. | Yes / No |
| **Small and Minority Businesses, Women Business Enterprises, and Labor Surplus Area Firms** (2 *CFR*, Section 200.321): Describe the affirmative process for ensuring that small and minority businesses, women business enterprises, and labor surplus area firms are used when possible. | Required for SNP Operators |
| **Intergovernmental Procurement** (2 *CFR*, Section 200.318[e], USDA Policy Memo SP 05-2017): Describe the process for conducting state and local intergovernmental purchases. | Yes / No |
| **Cooperative Procurement** (2 *CFR*, Section 200.318[e]), USDA Policy Memo SP 05-2017): Describe the agency’s role, responsibility, and the process for procuring goods from a purchasing cooperative. | Yes / No |
| **Micropurchase Procedures** (2 *CFR*, Section 200.320[a]): Describe the process for procuring goods or services when the dollar amount does not exceed $10,000, or the agency’s relevant micropurchase threshold when lower, per procurement transaction. Describe how purchases are distributed equitably among qualified suppliers, including justification for situations when purchases are not spread equitably among qualified suppliers. Describe procedures for maintaining a log of micropurchases by suppliers. | Yes / No |
| **Small Purchase Procedures** (2 *CFR*, Section 200.320[b]): Describe the process for procuring goods or services when the total dollar amount isless than the federal small purchase threshold of $250,000, or the agency’s relevant small purchase threshold per procurement transaction (when lower).  | Yes / No |
| **Formal Purchase Procedures** (2 *CFR*, Section 200.320[c][d]): Describe the process for procuring goods or services when the dollar amount exceeds $250,000, or the agency’s relevant small purchase threshold per procurement transaction (when lower). | Yes / No |
| **Noncompetitive Procurement** (2 *CFR*, Section 200.320[f]): Describe the process for awarding a sole source or noncompetitive contract. | Yes / No |
| **Cost and Price Analysis** (2 *CFR*, Section 200.323): Describe the process for performing a cost or price analysis for every procurement action in excess of the small purchase threshold. | Yes / No |
| **Clear Description** (2 *CFR*, Section 200.319[c][1]): Describe the process for performing ensuring all solicitations incorporate clear and accurate descriptions of the technical requirements for the material, product, or service to be procured. | Yes / No |
| **Contractor Involvement** (2 *CFR*, Section 200.319[a]): Describe the process for ensuring that potential contractors are prohibited from developing specifications, bid documents, and contracts.  | Yes / No |
| **Geographic Preference** (*7 CFR*, Section 210.21[g]): Describe the process for applying a geographic preference and how the agency ensures that geographic preference language. | Yes / No |
| **Brand Name or Equivalent** (2 *CFR*, Section 200.319[a][6][c][i]): Describe the process for ensuring that equivalents to a brand name product are included in solicitations and the process for identifying equivalent brands. | Yes / No |
| **Summer Food Service Program (SFSP) Bonding Requirements** (2 *CFR*, Section 225.15[m][5][6]) (for SFSP only): Describe the process for ensuring that all contractors submit a bid bond for bids and proposals that are over the small purchase threshold and the awarded contractor submits a performance bond within 10 days. | Yes / No |
| **Certifications** (Including, but not limited to 2 *CFR*, Appendix II): Describe the process for ensuring that all applicable certifications are included in procurement documents. Certifications may include: Clean Air Act, Federal Water Pollution Control Act for contracts over $150,000, Debarment and Suspension, Byrd Anti-Lobbying Amendment for contracts over $100,000, Equal Employment Opportunity for contracts over $10,000, and Independent Price Determination. | Yes / No |
| **Bid Openings for SFSP only** (7 *CFR*, Section 225.6[h][4]): Applies only to bid openings when program operators are expected to receive more than $250,000 in program payments. Describe the process for notifying their Child Nutrition Consultant, with a minimum of 14 days advance notice, of the time and place of the bid opening for all formal purchases. | Yes / No |
| **Evaluation Procedures** (2 *CFR*, Section 200.319[c][2]): Describe the process for ensuring that solicitations identify the requirements that the vendor must fulfill and all other criteria to be used when evaluating bids and proposals. | Yes / No |
| **Responsible Contractors** (2 *CFR*, Section 200.318[h]): Describe the process for ensuring that contracts are awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of the contract and that potential contractors are not on the System for Award Management’s list of suspended and debarred contractors. | Yes / No |
| **Bid Protest** (2 *CFR*, Section 200.318[k]): Describe the process for how a bidder or respondent can protest a procurement contract. | Yes / No |
| **Contract Monitoring** (2 *CFR*, Section 200.318[b]): Describe the process used to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract. | Yes / No |
| **Advertisements** (2 *CFR*, Section 200.320[c][2][i] and [d][1]): Describe the process for placing advertisements for bid proposals.  | Yes / No |