

Procurement Documents

- WVBE Purchasing Policy 8200
- USDA Memo SP05-2017; SP02-2017; CACFP03-2017 – Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third-Party Services.
- USDA Memo FD-144, SP 04-2018, SFSP 01-2018, CACFP 04-2018 – Market Basket Analysis when Procuring Program Goods and Modifying Contracted-For Product Lists.

Purchasing Thresholds

- Federal Thresholds
 - Micro-Purchase - \$10,000
 - Small Purchase - \$250,000
 - Formal Procurement – above \$250,000

- Purchasing Policy 8200 (Section 7.11) Thresholds
 - Micro-Purchase - \$5,000
 - Small Purchase - \$25,000
 - \$5,000-\$10,000 – Verbal bids are allowed. \$10,000-\$25,000 – Requires written bids.
 - Formal Procurement – above \$25,000
 - Over \$50,000 requires sealed bids.

- All WV County BOE's must follow the more restrictive state thresholds.

Micro-Purchase

- Procurement by micro-purchase is the acquisition of food, supplies or services not exceeding \$5,000; may be awarded without soliciting competitive bids if price is reasonable.
 - While not required, competitive bids are still encouraged.
 - Still subject to the buy American Provision.
 - To the maximum extent practical, products are produced in the U.S. or is processed in the U.S substantially using agricultural commodities that are produced in the U.S.
- Benefits
 - Districts can react quickly to changing markets and urgent needs.
 - Helpful for small SFAs.
 - Makes purchasing local/seasonal foods easier.
- School Districts cannot intentionally divide purchases if the only justification is to keep the price below the federal, state, or local small-purchase or micro-purchase threshold.

Micro-Purchase

- Purchases must be under the \$5,000 threshold.
- The price paid must be reasonable.
- Purchases must be spread equitably among qualified sources, to the extent practicable.
- An approved purchase order is required before the merchandise or service is ordered.

Small Purchase

- Purchases with a value greater than \$5,000 but less than \$25,000.
- Competitive bids are required.
- A minimum of 3 verbal/written quotes must be obtained, whenever practicable.
- Bids may be solicited by telephone, internet, mail, or by visiting the vendor.
- Documentation must be maintained of all quotes obtained.
- An approved purchase order is required before the merchandise or service is ordered.
- Verbal bids are not permissible above \$10,000. If the purchase amount is between \$10,000 and \$25,000 a written bid must be submitted by the vendor.

Formal Purchase

- Purchases costing above \$25,000.
- Competitive bids are required and bids shall be solicited from at least three known suppliers whenever practical, using advertising media such as newspapers, the internet, trade journals, purchasing bulletins, other media considered advisable, or mass mailings.
 - If a vendor list is maintained, bid requests may be sent directly to know vendors, in addition to public advertising.
 - If a vendor list is not maintained, a good faith effort must be made to solicit as many competitive bids as practical, providing them adequate time to submit proposals.
- The invitation for bids, must include all specifications and pertinent attachments, and shall define the items or services in order for the bidder to properly respond.

Formal Purchase

- Any and all bids may be rejected if there is a sound documented reason.
- The request for bids must be retained for public review and inspection during normal business hours. After the bid is awarded, all criteria and evaluations used in making the selection, as well as all bids received from vendors, must be retained for public review. Refer to the Records Retention Manual issued by the Office of School Finance for the period of time that the bids are to be retained.
- An approved purchase order is required before the merchandise or service is ordered.
- If a purchase will cost above \$50,000, the solicitation for bids must specify that the bids are to be received in the form of sealed bids.

Noncompetitive (Sole Source) Procurement

- Is noncompetitive procurement ever allowed?
 - Yes
- Only allowed if:
 - The item is only available from a single source.
 - Emergency situations.
 - Competition is determined inadequate.
 - Authorized by FNS or State Agency.
- Refer to Policy 8200 Section 28 for additional requirements for emergency situations.



Cooperatives and Buying Groups

- Cooperatives and buying groups are the coming together of organizations, such as schools, that share a common goal and interest, leverage their combined purchasing power, share core competencies, and spread out the administrative burden of managing multiple or large complex awarded contracts.

Types of Buying Groups

- Cooperatives (CNP Program operator-only and/or CNP State Agency Cooperatives)
- Agent
- Third-Party Entities



Cooperative (COOP)

- An SFA may participate in a cooperative comprised solely of SFAs without conducting a competitive procurement if the local cooperative was created by SFAs banding together to form a cooperative in order to increase purchasing power.
- An SFA would not need to undertake a procurement because the cooperative is designed to act on its own behalf.
- The cooperative would have to perform competitive procurements that follow all Federal and State procurement regulations when procuring goods and services for its member.
- In other words, a cooperative that is comprised solely of SFAs procuring as a collective group of SFAs must procure in the same manner as an individual SFA.

Cooperative (COOP)

- SFA's should review the procurement of the cooperative to make sure it complies with Federal and State procurement regulations.
- SFAs who choose to join an SFA only COOP should practice due diligence to assure that a the COOP is comprised solely of SFAs.
- If the COOP contains a third party member that is not another SFA or governmental organization, the SFA may join the COOP but all purchases through the COOP would require the SFA to conduct a competitive procurement for that purchase.

Cooperative (COOP)

- Examples of this type of COOP would be:
 - Southwest
 - Mountaineer Highlands
 - Country Roads
 - RESA VI
 - Panhandle 8

Agent

- An agent is a person or business authorized to act on a client's behalf.
- An agent may be necessary for procuring goods or services when/if the SFA does not have the necessary technical understanding of the equipment, service, food or other food service supplies to be purchased; or lacks the time or expertise to conduct a proper procurement.
- An agent must be contractually required to conduct all competitive procurement methods with the SFAs interest solely in mind.
- An agent may not use pre-existing contractual relationships in lieu of conduction a competitive procurement on behalf of the SFA.

Agent

- An agent who prepares a solicitation for an SFA cannot also respond to the solicitation due to conflict of interest.
- The SFA who hires the agent is responsible for monitoring contractor performance and ensuring that the solicitation and contract are in compliance with all applicable Federal and State procurement regulations and contract provisions.
- An agent's services that are in excess of the of the micro-purchase threshold must be competitively procured.

Third-Party Entities

- Third-Party Entity Includes:
 - State Procurement Agency Agreements
 - Inter-Agency Agreements
 - Group Purchasing/Buying Organizations
 - Third-Party Vendors

Third-Party Entities

- State Procurement Agency Agreements
 - Inter-governmental agreement with the State which may include public, private and non-profit entities.
 - Not part of the CNP State Agency as they are conducted for State facility needs using State procurement standards.
 - While the State allows local education agencies (LEAs), school food authorities (SFAs), and other CNP operators to purchase from the State's contracted sources it does not mean an SFA can purchase directly off the contract without doing their own procurement.
 - When competitive procurement methods are conducted by the program operator, this agreement may be one source of prices when using small purchase procedures, sealed bids, or competitive proposals, as applicable.



Third-Party Entities

- Inter-Agency Agreements
 - An agreement which may include public, private and non-profit entities formed to procure goods and services together.
 - An example is an educational hub whose purpose is to purchase goods and services for LEAs.
 - When competitive procurement methods are conducted by the program operator, this agreement may be one source of prices when using small purchase procedures, sealed bids, or competitive proposals, as applicable.



Third-Party Entities

- Group Purchasing/Buying Organizations and Third-Party Vendors
 - Often include CNP and non-program operators such as public and private schools, hospitals, universities, law enforcement, public works, etc.
 - This type of buying group is an entity that is created to leverage the purchasing power of a group of public/private organizations and government/non-government organizations including SFAs.
 - These buying groups can be private for-profit or nonprofit entities.
 - They are typically structured in a way that may include a membership fee paid by member users, who are then granted access to the GPO price lists of products and services.



Third-Party Entities

- GPO's are normally funded by administrative fees. These fees may be paid directly to the GPO, from manufacturers, suppliers, distributors, and/or vendors contracted by the GPO; or they may be paid directly to the GPO, by its members.
- Membership fees are in addition to the price of products and services purchased.
- Schools do not have to competitively procure membership in this type of buying group if membership fees are negligible (below the micro-purchase threshold).
- Paying the membership fee does not constitute compliance with the competitive procurement process that Program Operators are required to conduct when procuring products and services.



Third Party Entities

- A purchase through this type of buying group would require the SFA to conduct a competitive procurement for that purchase.
- For purchases under the small purchase threshold, a program operator may pay a membership fee to multiple GPOs and use them as one source(s) among an adequate number of qualified sources.
- For the procurement of goods and services above the small purchase threshold, program operators must publish sealed bids or competitive proposals to which GPOs may respond provided the GPO has not drafted such solicitation (hired by the SFA as an agent for the particular solicitation).
- Purchasing goods and services from a GPO without conducting a competitive procurement process is limited to the micro-purchase threshold. When competitive procurement methods are conducted by the SFA, GPO price lists may be one source of prices when using small purchase procedures, sealed bids or competitive proposals, as applicable.

GPO/GBO/Third Party Entities Summary

- 3 ways to purchase using one of these buying groups.
 - Paying a membership fee.
 - Contracting with the buying group for products or services.
 - Contracting with the buying group as an agent.
- Paying a Membership Fee.
 - Membership fee does not have to be procured if negligible amount.
 - Does not constitute compliance with the competitive procurement process.
 - For a small purchase, a program operator may pay a membership fee to multiple GPOs as one source among an adequate number of qualified sources.
 - Any purchase, over the Small purchase threshold would require the SFA to conduct a competitive procurement for that purchase.

GPO/GBO/Third Party Entities Summary

- Contracting with the GPO for products or services.
 - Sealed bid (IFB) or competitive proposal (RFP) required.
 - If the GPO is on the SFAs/COOPs vender list, the solicitation can be sent directly to the GPO in addition to being publicly advertised.
 - GPO must respond to the solicitation.
 - SFA must perform a cost or price analysis for all procurements.
 - If IFB, the solicitation must result in a firm fixed price contract awarded to the lowest responsible and responsive bidder.
 - If RFP, resulting contract must be awarded to the most responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

GPO/GBO/Third Party Entities Summary



- Contracting with the GPO (or any third party entity) as an agent.
 - A procurement agent must be contractually required to conduct all competitive procurement methods with its client's interests solely in mind.
 - The scope of duties, as well as the prices/costs for services must be clearly defined.
 - The agent may not use pre-existing contractual relationships in lieu of conducting a competitive procurement on behalf of the SFA.
 - An agent preparing/publishing a solicitation on behalf of an SFA may not respond to the solicitation.
 - An agent's services in excess of the micro-purchase threshold, \$5,000, must be competitively procured.

Intergovernmental Cooperation and “Piggybacking”

- An SFA may only enter into an intergovernmental agreement with a State Agency or local governmental agency that allows the SFA to join or “piggyback” onto an existing agreement between that State Agency or local governmental entity and a goods or service provider when that agreement was procured consistent with applicable CNP regulations.
 - The contract must have language that allows for other government agencies to “piggyback”.
 - SFA should carefully review the solicitation issued by the State agency or local governmental agency and the resulting contract to ensure that the additional scope in services does not create a material change.
 - SFA must ensure that the contract meets their need.
 - SFA’s should seek guidance from their State Agency prior to executing an intergovernmental agreement.

Market Basket Analysis

- A method used to evaluate bids/proposals based on a representative sample of the goods the SFA wishes to obtain.
- FNS recommends the aggregate value be 75% or more of the estimated value of the contract to be awarded.
- The SFA must still obtain pricing for the remaining listed goods that were not included in the market basket analysis prior to the final award.
- If a market basket is used to evaluate bids, all anticipated products must still be listed in the original solicitation.
- A written explanation of the process for using a market basket to perform cost/analysis must be included in SFAs procurement procedures.
- Your Solicitation must also include language that allows for a market basket analysis.



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Contract Requirements

Contract Requirements

- The Solicitation/Contract must include all Federal and State contract provisions.
 - Buy American Provision
 - Termination Clause (Contracts greater than \$10,000)
 - Equal Employment Opportunity
 - Debarment and Suspension
 - Lobbying Certification (Contracts greater than \$100,000)
 - Contractual Procedures (Contracts greater than \$250,000)
- See handout in your folder for complete list that includes an explanation of each required provision.

Contract Requirements

- Contracts must include clear and accurate descriptions of all anticipated goods/services.
- Contracts must include estimated quantities of all anticipated goods/services.
- Can additional items be added to the Contract?
 - Yes



Contract Requirements

- In order for items to be added to a contract after the original solicitation, the contract must include language allowing the option to add goods to the contract.
 - Must have a stated percentage limit on additions (recommended is 10% of the value).
 - Sample language is included in the USDA Memo SP 04-2018 Market Basket Analysis when Procuring Program Goods and Modifying Contracted-For Product Lists.



Contract Requirements

- Total contract value may not exceed the limit specified in the solicitation and contract.
- Goods added to the contract must be included in a contract amendment.
- SFA must maintain records of all additional goods purchased to ensure limit is not exceeded.



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Procurement Review Process

USDA Procurement Review Requirement

- Starting in SY2017, USDA requires State Agencies to review the procurement practices of SFA's to ensure compliance with Federal guidelines.
- USDA Provides a Tool that the OCN must complete to monitor SFA Compliance.
- In order to complete this tool, OCN needs a vendor transaction list showing all payments made to vendors for child nutrition related products/services.

Procurement Review Process

- OCN is completing the reviews at the same time, or at least in the same year, as your normal Child Nutrition Administrative Review.
- Obtain a detailed transaction list by vendor for the entire school year.
 - Kim Harvey created a query that pulls the information from WVEIS.
- OCN formats and sorts the transaction list and enters the information into the USDA Procurement Tool.
- The Vendor Table of the tool is sent to the Food Service Director to review and answer questions related to the small purchase and formal procurement transactions.

Procurement Review Process

- OCN selects vendors for review from each category (micro-purchase, small purchase, and Formal) based on criteria built into the review tool.
- Invoices and all documentation related to small purchases and formal procurements are requested. Food Service Directors can scan and email, when possible, or the documents can be viewed onsite if needed.

Questions??

Tony Crago
acrago@k12.wv.us
304-558-3396

Required Contract Provision 2 CFR 200 Appendix II to Part 200 - Table

	Title	Contract Type and Value	CFR Regulation
a.	Contractual Procedures	Contractual procedure requirements for <u>all</u> awarded contacts with a value <u>greater than</u> \$250,000	2 CFR 200 Appendix II to Part 200 (a)
b.	Termination Clause	Contractual procedure requirements for <u>all</u> awarded contacts with a value <u>greater than</u> \$10,000	2 CFR 200 Appendix II to Part 200 (b)
c.	Equal Employment Opportunity	Contractual procedure requirements for <u>all</u> awarded contacts	2 CFR 200 Appendix II to Part 200 (c)
d.	Davis-Bacon Act	Contractual procedure requirements for <u>all</u> awarded <u>construction contracts</u> with a value <u>greater than</u> \$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 <u>greater than</u> \$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 <u>all</u> 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 <u>all</u> awarded contacts with a value <u>greater than</u> \$250,000	2 CFR 200 Appendix II to Part 200 (g)
h.	Debarment and Suspension Certification	Contractual procedure requirements for <u>all</u> awarded contacts with a value <u>greater than</u> \$25,000	2 CFR 200 Appendix II to Part 200 (h)
i.	Byrd Anti-Lobbying Certification	Contractual procedure requirements for <u>all</u> awarded contacts with a value <u>greater than</u> \$100,000	2 CFR 200 Appendix II to Part 200 (i)

Required Contract Provisions from Code of Federal Regulations (CFR), as applicable: [Appendix II to 2 CFR 200/7 CFR 3019.48]

- a) 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.
- b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- c) 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 the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “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 implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- d) 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. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. 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”). 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. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). 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). 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. 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. 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. 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.

- f) 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 subrecipient 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 subrecipient 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.
- g) 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 subgrants 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).
- h) 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.
- i) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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. 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.