

Code of Conduct and Procurement Procedure Checklist

Background

In December 2013, the federal government released Title 2, *Code of Federal Regulations* (2 *CFR*), Part 200, which includes the requirements for all child nutrition programs 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 local counsel to determine which components are required in procurement documents. Agencies must retain all procurement documents to ensure they are available upon request by the CDE.

For further guidance on the requirement for agencies to have a written code of conduct and procurement procedures, refer to the following documents:

- 2 *CFR*, Part 200, sections 318–326, and 2 *CFR*, Part 200.1, on the Electronic Code of Federal Regulations Web page at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl.
- U.S. Department of Agriculture (USDA) Policy Memoranda SP 04-2016, CACFP 04-2016, and SFSP 04-2016 Local Agency Procurement Reviews: School Year 2015–16 on the USDA Local Agency Procurement Reviews SY 2015–16 Web page at <https://www.fns.usda.gov/local-agency-procurement-reviews-sy2015-2016>.
- USDA Policy Memo SP 03-2017 Draft Tool for Local Agency Procurement Reviews for School Food Authorities (SFA) in SY 2016–17–Revised on the Draft Tool for Local Agency Procurement Reviews for SFAs in SY 2016–17–Revised at <https://www.fns.usda.gov/draft-tool-local-agency-procurement-reviews-school-food-authorities-sy2016-2017-revised>.

Contact

For technical assistance, please contact the CDE School Food Service Contracts Unit by phone at 800-952-5609 or by e-mail at SFSCONTRACTS@cde.ca.gov.

Code of Conduct Components	Include in Written Documents	
Conflicts of Interest and Disciplinary Action (2 <i>CFR</i> , sections 200.318[c][1] and 400.2; California <i>Government Code</i> , 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	
Gratuities, Favors, or Gifts (2 <i>CFR</i> , sections 200.318[c][1] and 400.2): 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; (3) the definition of nominal value for agencies that allow the acceptance of gifts.	Required for all Agencies	
Organizational Conflicts of Interest (2 <i>CFR</i> , 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.	Yes	No
Statement of Economic Interest (California <i>Government Code</i> , 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.	Yes	No

Procurement Procedures Components	Is this Applicable to my Agency?	
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 <i>CFR</i> , 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
Duplication of Goods or Services (2 <i>CFR</i> , 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	
Small and Minority Businesses, Women Business Enterprises, and Labor Surplus Area Firms (2 <i>CFR</i> , 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.	Yes	No

Intergovernmental Procurement (2 <i>CFR</i> , Section 200.318[e]): Describe the process for conducting intergovernmental purchases.	Yes	No
Cooperative Procurement (2 <i>CFR</i> , Section 200.318[e]): Describe the agency's role, responsibility, and the process for procuring goods from a purchasing cooperative.	Yes	No
Micropurchase Procedures (2 <i>CFR</i> , Section 200.320[a]): Describe the process for procuring goods or services when the dollar amount does not exceed \$3,500 (or the current threshold) 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 <i>CFR</i> , Section 200.320[b] for all agencies and California <i>Public Contract Code</i> [PCC] 20116 for school districts and county offices of education [COE]): Describe the process for procuring goods or services when the total dollar amount is less than the agency's relevant small purchase threshold per procurement transaction. California PCC 20116 includes the requirement of publishing an annual notice inviting contractors to register to be notified of future informal bidding projects.	Yes	No
Formal Purchase Procedures (2 <i>CFR</i> , Section 200.320[c] and [d] for all agencies and California PCC 20111[a][3] for school districts and COEs): Describe the process for procuring goods or services when the dollar amount is more than the agency's relevant small purchase threshold per procurement transaction.	Yes	No
Noncompetitive Procurement (2 <i>CFR</i> , Section 200.320[f]): Describe the process for awarding a sole source or noncompetitive contract.	Yes	No
Cost and Price Analysis (2 <i>CFR</i> , 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 <i>CFR</i> , Section 200.319[c][1]): Describe the process for ensuring that 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 <i>CFR</i> , 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 <i>CFR</i> , Section 210.21[g]): Describe the process for applying a geographic preference and how the agency ensures that geographic preference language is not so restrictive as to limit full and open competition.	Yes	No
Buy American Provision (7 <i>CFR</i> , Section 210.21[d][1-3]; USDA Policy Memo SP-24-2016) (for SFAs only): Describe the process for ensuring that domestically grown and processed agricultural commodities are procured and how exemptions to the Buy American Provision are justified and documented.	Yes	No
Brand Name or Equivalent (2 <i>CFR</i> , Section 200.319[a][6]): 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

Discounts, Rebates, and Credits (7 <i>CFR</i> , Section 210.21[f][iv]): Describe the process for ensuring that rebates, discounts, and other applicable credits are received.	Yes	No
Bonding Requirements (2 <i>CFR</i> , Section 200.325): Describe the process for determining whether construction or facility improvement bonding requirements apply to a procurement.	Yes	No
Summer Food Service Program (SFSP) Bonding Requirements (2 <i>CFR</i> , sections 225.15[m][5] and [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 <i>CFR</i> , Appendix II and 48 <i>CFR</i> , 52.203-2): Describe the process for ensuring that all applicable certifications are included in procurement documents. Typical certifications include: Energy Policy, Clean Air Act, Debarment and Suspension, Certification of Lobbying, Disclosure of Lobbying Activities, Equal Employment Opportunity, Drug Free Workplace, Independent Price Determination, and Iran Contracting Act of 2010 (for California public agencies with contracts over \$1,000,000).	Yes	No
Bid Openings for SFSP only (7 <i>CFR</i> , Section 225.6[h][4]): Describe the process for notifying the state agency, 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 <i>CFR</i> , 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 <i>CFR</i> , 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 <i>CFR</i> , Section 200.318[k]): Describe the process for how a bidder or respondent can protest a procurement contract.	Yes	No
Contract Monitoring (2 <i>CFR</i> , 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
Maintenance of Records (2 <i>CFR</i> , 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.	Yes	No
Advertisements (2 <i>CFR</i> , sections 200.320[c][2][i] and [d][1] for all agencies and California <i>PCC</i> , Section 20112, for school districts and COEs): Describe the process for placing advertisements for bid proposals. California <i>PCC</i> , Section 20112, includes requirements for content, frequency, and duration of advertising.	Yes	No