

PROCUREMENT STANDARDS

*Program Regulations found in:
7 CFR Parts 210, 215, 220, 225, and 226
and 2 CFR 200.318-.326*



PROCUREMENT STANDARDS

- ❖ Procurement standards
 - ❖ Program Regulations
 - ❖ Government-wide Regulations

- ❖ Procurement Monitoring
 - ❖ What to look for?



PROCUREMENT STANDARDS

- ❖ Program Regulations:
 - ❖ 7 CFR 210 – National School Lunch Program
 - ❖ 7 CFR 215 – Special Milk Program
 - ❖ 7 CFR 220 – School Breakfast Program
 - ❖ 7 CFR 225 – Summer Food Service Program
 - ❖ 7 CFR 226 – Child and Adult Care Food Program
 - ❖ 7 CFR 250 – Subpart D: Donated Foods in Food Service Management Company Contracts



PROCUREMENT STANDARDS

❖ Program Regulations:

❖ 7 CFR Parts 210.21 and 220.16

❖ National School Lunch Program and School Breakfast Program

- ❖ Contractual responsibilities
- ❖ Procedures
 - ❖ Written code of conduct - complies with 2 CFR Part 200.318
 - ❖ Pre-issuance review, if imposed
 - ❖ Prototype solicitation documents/contracts
 - ❖ Prohibited expenditures
- ❖ Buy American provision (NSLP and SBP - 7 CFR Parts 210.21(d) and 220.16(d))
- ❖ Cost-reimbursable contract, required provisions (NSLP, SMP, SBP)
- ❖ Geographic preference option (NSLP, SMP, SBP, SFSP, CACFP)



PROCUREMENT STANDARDS

❖ Program Regulations:

❖ 7 CFR Part 215.14a Special Milk Program

- ❖ Similar to NSLP and SBP without Buy American provision

❖ 7 CFR 225.17 – Summer Food Service Program

- ❖ Written procurement procedures (also in 2 CFR Part 200.318(a))
- ❖ Minority business enterprises (also in 2 CFR Part 200.321)
- ❖ Geographic preference, as applicable

❖ 7 CFR 226.22 – Child and Adult Care Food Program

❖ Applies to Institutions:

- ★ Procurement procedures (small purchase, sealed bids/competitive negotiations and noncompetitive negotiations)
- ★ Written code of conduct (also in 2 CFR Part 200.318(c))
- ★ Small and minority businesses, affirmative steps when possible
- ★ Contract administration system (also in 2 CFR Part 200.318(b))
- ★ Geographic preference, as applicable



PROCUREMENT STANDARDS: (A CLOSER LOOK AT BUY AMERICAN)

Buy American (7 CFR Parts 210.21(d) and 220.16(d))

❖ Domestic commodity or product:

- ❖ An agricultural commodity produced in the United States; and
- ❖ A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

- ❖ Requirement. School food authorities must purchase, to the maximum extent practicable, domestic commodities or products.



PROCUREMENT STANDARDS (BUY AMERICAN CONT.)

- ❖ Applies to SFAs and entities purchasing on their behalf. This includes:
 - ❖ FSMCs, SFA Cooperatives, intergovernmental and inter-entity agreements, and group purchasing organizations
 - ❖ Use a specification of 100% domestically grown and processed
 - ❖ Require advance notice /documentation if an exception is required to be substituted



PROCUREMENT STANDARDS (BUY AMERICAN CONT.)

❖ Limited exceptions:

- ❖ A product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; or
- ❖ Competitive bids reveal the costs of a U.S. product are significantly higher than the foreign product.
- ❖ No \$ or % threshold to trigger exception
- ❖ No requirement to request a waiver, however, must document the exemption



PROCUREMENT STANDARDS (BUY AMERICAN COMPLIANCE AND OVERSIGHT)

- ❖ Buy American provision
 - ❖ Solicitation ✓
 - ❖ Contract ✓
 - ❖ Contractor performance monitoring by SFAs ✓
 - ❖ Exemptions documented ✓
 - ❖ State agency oversight and enforcement ✓
 - ❖ Periodic on-site review of food storage facilities ✓



PROCUREMENT STANDARDS (COST-REIMBURSABLE CONTRACTS)

Cost-reimbursable contracts- Required contract provisions:

- ❖ (7 CFR Parts 210.21(f), 215.14a(d), and 220.16(e))
- ❖ Applicable in all cost-reimbursable contracts NOT just contracts with food service management companies
- ❖ The SFA must include the required provisions, even in contracts with cost reimbursable provisions, and in solicitation documents to obtain offers for such contracts
- ❖ Avoid merely referencing these by citation as this may be considered ambiguous and ineffective resulting in noncompliance or difficulty enforcing contractor performance when monitoring contracts

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PROCUREMENT STANDARDS (REQUIRED CONTRACT PROVISIONS - DONATED FOODS IN FSMC CONTRACTS)

- ❖ 7 CFR Part 250.53(a-b)
 - ❖ (a) Required contract provisions in fixed-price contracts and procurement documents
 - ❖ *12 required contract provisions*
 - ❖ (b) Required contract provisions in cost-reimbursable contracts
 - ❖ Same **12** as in (a) above, **plus:** a statement that the food service management company will ensure that its system of inventory management will not result in the recipient agency being charged for donated foods.

PROCUREMENT STANDARDS (GEOGRAPHIC PREFERENCE – ALL PROGRAMS)

- ❖ Program operators, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products
 - ❖ This means agricultural products that retain their *inherent character*.
- ❖ The following food handling and preservation are not considered character changing:
 - ❖ Cooling/refrigerating/freezing;
 - ❖ Size adjustment–peeling/slicing/dicing/cutting/chopping/shucking/etc;
 - ❖ Forming ground products into patties without any additives or fillers;
 - ❖ Drying/dehydration/washing/packaging/vacuum packing/bagging;
 - ❖ The addition of ascorbic acid or other preservatives to prevent oxidation;
 - ❖ Butchering livestock and poultry/cleaning fish; and
 - ❖ Pasteurization of milk.

PROCUREMENT STANDARDS (*GEOGRAPHIC PREFERENCE CONT.*)

- ❖ Applying Geographic preference- evaluation for contract award
 - ❖ SFA, or State agency purchasing on behalf of SFA, has the discretion to determine the local area to which this option will be applied
- ❖ **SP18 – 2011, *Procurement Geographic Preference Q&As*, dated February 1, 2011**
 - ❖ Solicitation must clearly outline how responses will be evaluated and scored, including geographic preference.
 - ❖ Regulations do not prescribe preference points/percentage assigned.
 - ❖ Any preference impacts free and open competition, therefore, it is imperative not to restrict competition.
 - ❖ Application of the preference option must leave an appropriate number of qualified firms, given the nature and size of the procurement to compete for the contract.

PROCUREMENT STANDARDS

Program Specific Procurement Standards

Programs	Buy American	Cost-reimbursable Contract Provisions	Geographic Preference	Minority Business Enterprises
NSLP and SBP	7 CFR Parts 210.21(d) and 220.16(d)	7 CFR Parts 210.21(f), 220.16(e), and 250.53	7 CFR Part 210.21(g) and 220.16(f)	
SMP	-	7 CFR Part 215.14a(d)	7 CFR Part 215.14a(e)	
SFSP	-	-	7 CFR Part 225.17(e)	7 CFR Part 225.17(d)
CACFP	-	-	7 CFR Part 226.22(n)	7 CFR Part 226.22(f)
Donated Foods	7 CFR Part 250.23	7 CFR Part 250.53(b)		

PROCUREMENT STANDARDS

❖ Government-wide Regulations: 2 CFR Parts 200.317-326

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Title 2 – Grants and Agreements

Chapter II – 200-299 Office of Management and Budget
Guidance

Part 200 – UNIFORM ADMINISTRATIVE REQUIREMENTS,
COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR
FEDERAL AWARDS



PROCUREMENT STANDARDS

- ❖ Government-wide Regulations:
 - ❖ 2 CFR Sections 200.318-326:
 - ❖ § 200.318 : General procurement standards
 - ❖ § 200.319: Competition
 - ❖ § 200.320: Procurement Methods
 - ❖ § 200.321: Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms
 - ❖ § 200.322: Procurement of recovered materials
 - ❖ § 200.323: Contract cost and price
 - ❖ § 200.324: Federal awarding agency or pass-through entity review
 - ❖ § 200.325: Bonding requirements
 - ❖ § 200.326: Contract provisions



PROCUREMENT STANDARDS

- ❖ **2 CFR Part 200.318 General procurement standards**
 - ❖ (a) Documented procurement procedures
 - ❖ (b) Oversight of contractor performance (*a closer look coming up*)
 - ❖ (c) Written standards of conduct
 - ❖ (d) Avoid unnecessary or duplicative items
 - ❖ Consider consolidating/breaking-out procurements for more economy
 - ❖ (e) Encouraged to enter Intergovernmental/inter-entity agreements
 - ❖ (f-g) Use excess/surplus in lieu of new, value engineering
 - ❖ (h) Award contracts to responsible contractors
 - ❖ (i) Maintain records
 - ❖ (j) Time and material type contracts
 - ❖ (k) Settlement of contract issues



PROCUREMENT STANDARDS

❖ 2 CFR Part 318: A closer look

- ❖ (a) Documented procurement procedures
 - ❖ Reflect Federal, State and local laws and regulations conforming to Federal
- ❖ (b) Oversight of contractor performance (***we will revisit at the end***)
- ❖ (c) Written standards of conduct that:
 - ❖ Prohibits real, or apparent conflicts of interest
 - ❖ Covers employees, officer, or agent engaged in the selection, award, and administration of contract
 - ❖ No financial or other interest in, or a tangible personal benefit from, a firm considered for a contract
 - ❖ Prohibits soliciting or accepting gratuities, favors or anything of monetary value from contractors or parties to subcontracts
 - ❖ May have standards for situations when not substantial, or gift is unsolicited and of nominal value
 - ❖ Includes disciplinary actions to be applied for violations



PROCUREMENT STANDARDS

❖ 2 CFR Part 318: A closer look

- ❖ (d) Avoid unnecessary or duplicative items
 - ❖ Consider consolidating or breaking out procurements for more economical purchases
- ❖ (e) Intergovernmental/inter-entity agreements
 - ❖ Promotes cost-effective use of common or shared goods and services
 - ❖ Agreement does not replace competitive procurement methods
 - ❖ Competitive procurement methods must still be conducted
 - ❖ If “piggybacking” or joining an existing agreement, the agreement must have provisions allowing such and determine if it creates a material change
- ❖ (f-g) Use excess/surplus in lieu of new, value engineering



PROCUREMENT STANDARDS

❖ 2 CFR Part 318: A closer look

- ❖ (h) Award contracts to responsible contractors
 - ❖ Able to perform terms and conditions successfully
 - ❖ Contractor integrity, compliance with public policy
 - ❖ Record of past performance
 - ❖ Financial and technical resources
- ❖ (i) Maintain records to detail the history of the procurement
 - ❖ Rationale of the method, selection of contract type, contractor selection or rejection, and basis for the contract price.
- ❖ (j) Time and material type contracts
- ❖ (k) Settlement of contract issues
 - ❖ Source evaluation, protests, disputes, and claims are responsibility of the entity conducting the procurement



PROCUREMENT STANDARDS

❖ 2 CFR Part 200.319 – Competition

- ❖ (a) All procurements require full and open competition
 - ❖ Situations cannot restrict competition
- ❖ (b) Prohibits statutorily/administratively imposed state or local geographic preferences unless expressly mandated or encouraged by Federal statutes
- ❖ (c) Written procedures for procurement transactions required; these procedures require that all solicitations:
 - ❖ Include clear and accurate descriptions without unduly restricting competition; and
 - ❖ Identify all requirements and evaluation factors.
- ❖ (d) Prequalified lists are current and ensure maximum open and free competition; must allow qualifying during solicitation period



PROCUREMENT STANDARDS

- ❖ 2 CFR Part 200.319 Competition (A closer look.)
 - ❖ All transactions must provide full and open competition
 - ❖ Sample situations considered to be restrictive of competition:
 - ★ Unreasonable requirements on firms;
 - ★ Unnecessary experience or excessive bonding requirements;
 - ★ Noncompetitive pricing practices between firms or companies;
 - ★ Noncompetitive contracts to consultants on retainer;
 - ★ Organizational conflicts of interest;
 - ★ Brand name without “or an equal” that describes relevant requirements; and
 - ★ Any arbitrary action in the procurement process.



PROCUREMENT STANDARDS

- ❖ **2 CFR Part 200.320: Procurement Methods**
 - ❖ (a) Micro-purchase
 - ❖ (b) Small purchase procedures
 - ❖ (c) Sealed bids
 - ❖ (d) Competitive Proposals
 - ❖ (e) [Reserved]
 - ❖ (f) Noncompetitive proposals



PROCUREMENT STANDARDS

- ❖ **2 CFR Part 200.320(a) Procurement method**
 - ❖ A closer look at Micro-purchases
 - ❖ Aggregate transaction does not exceed \$3,500
 - ❖ Equitably distributed among qualified suppliers
 - ❖ No quotes required
 - ❖ Price must be reasonable



PROCUREMENT STANDARDS

- ❖ **2 CFR Part 200.320(b) Procurement Method**
 - ❖ A closer look at Small Purchase Procedures (\$3,500-\$150,000 *or more restrictive threshold*)
 - ❖ Obtain quotes (may be email, catalogs, website, telephone, oral)
 - ❖ Documented
 - ❖ More than one source



PROCUREMENT STANDARDS

- ❖ **2 CFR Part 200.320(c) Procurement Method**
 - ❖ A closer look at Sealed Bids (Exceeds \$150,000, or most restrictive threshold)
 - ❖ Contract award
 - ❖ Firm, fixed-price with/without cost adjustment tied to a standard index
 - ❖ Lowest responsive and responsible bidder
 - ❖ Documents include a complete, adequate, and realistic specification/description
 - ❖ 2 or more bidders available that are willing and able to compete
 - ❖ Bids must be solicited from an adequate number of known suppliers, providing sufficient response time
 - ❖ Local and tribal governments must advertise publicly
 - ❖ Bids opened at time and place identified in document
 - ❖ Local and tribal governments must open publicly
 - ❖ Bids may be rejected for sound documented reason



PROCUREMENT STANDARDS

- ❖ 2 CFR Part 200.320(d) Procurement Methods
 - ❖ A closer look at Competitive Proposals
 - ❖ More than one source submitting an offer
 - ❖ Contract award
 - ❖ Either fixed-price or cost-reimbursable
 - ❖ Used when sealed bids not appropriate
 - ❖ Publicized with evaluation factors and relative importance
 - ❖ Adequate number of qualified sources (more than one)
 - ❖ Written method of conducting technical evaluations included
 - ❖ Awarded to responsible firm most advantageous to Program with price and other factors considered
 - ❖ Price is primary; see *Procurement Questions*, dated July 14, 2005



PROCUREMENT STANDARDS

❖ 2 CFR Part 200.320(f) Procurement Methods

❖ A closer look at Noncompetitive Proposals

- ❖ Procurement through solicitation of a proposal from only one source and may be used only when:
 - ❖ Item is only available from one source;
 - ❖ Public exigency or emergency – delay not permitted;
 - ❖ Authorized by FNS or State agency after written request; or
 - ❖ After solicitation of a number of sources, competition is deemed inadequate.



PROCUREMENT STANDARDS

- ❖ **2 CFR Part 200.321 Small, minority and women's businesses and labor surplus firms**
 - ❖ Affirmative steps must be taken to assure such businesses used when possible.
 - ❖ Affirmative steps include:
 - (a) Solicitation lists;
 - (b) Solicited when sources are available;
 - (c) Dividing total requirements, when economical feasible, to allow maximum participation;
 - (d) Use Small Business Administration and Minority Business Development Agency; and
 - (e) Require prime contractor, in subcontracts, to use affirmative steps.



PROCUREMENT STANDARDS

- ❖ **2 CFR Part 200.322: Procurement of recovered materials**
 - ❖ New in 2 CFR (not in 7 CFR Part 3016 or 3019)
 - ❖ For procurements exceeding \$10,000
 - ❖ Section 6002 of the Solid Waste Disposal Act
 - ❖ Procuring highest percentage of recovered materials practicable
 - ❖ Maximize energy and resource recovery
 - ❖ Affirmative program to procure recovered materials identified in the EPA guidelines
 - ❖ EPA Guidelines are found at 40 CFR Part 247



PROCUREMENT STANDARDS

- ❖ **2 CFR Part 200.323 Contract cost and price**
 - ❖ When purchase exceeds Simplified Acquisition Threshold including contract modifications
 - ❖ (a) Independent estimates prior to receiving bids/proposals
 - ❖ (b) When no price competition, negotiate fair and reasonable profit with considerations identified
 - ❖ (c) Costs must be allowable under Subpart E-Cost Principles
 - ❖ (d) No cost plus a % of cost and % construction cost methods of contracting allowed



PROCUREMENT STANDARDS

- ❖ 2 CFR Part 200.324 Federal awarding agency or pass-through entity review
 - ❖ Make proposed procurements available, upon request when:
 - ❖ Prior procedures are noncompliant
 - ❖ Procurement exceeds Simplified Acquisition Threshold AND
 - ❖ No competition is received
 - ❖ “Brand name product” is specified
 - ❖ Award is to other than low bidder under sealed bids
 - ❖ Contract modification changes scope of contract or increases the contract amount more than Simplified Acquisition Threshold

No pre-procurement review requirements



PROCUREMENT STANDARDS

- ❖ **2 CFR Part 200.325 Bond requirements**
 - ❖ (a) Bid guarantee (5% of bid price)
 - ❖ (b) Performance bond (100 % of the contract price)
 - ❖ (c) Payment bond (100 % of the contract price)



PROCUREMENT STANDARDS

- ❖ 2 CFR Part 200.326 Contract provisions
 - ❖ Appendix II to Part 200
 - ❖ (A) Administrative/contractual/legal remedies - Exceeds \$150K
 - ❖ (B) Termination for cause & convenience - Exceeds \$10K
 - ❖ (C) Equal Employment Opportunity (Construction contacts)
 - ❖ (D) Davis-Bacon Act - Exceeds \$2,000 (Construction contacts)
 - ❖ (E) Contract Work Hours/Safety Standards Act - Exceeds \$100K
 - ❖ (F) Rights to Inventions Made Under Contract
 - ❖ (G) Clean Air Act - Exceeds \$150K
 - ❖ (H) Debarment and Suspension
 - ❖ (I) Byrd Anti-Lobbying Amendment - Exceeds \$100K
 - ❖ (J) Recovered materials. See § 200.322.



PROCUREMENT STANDARDS (CONTRACTOR PERFORMANCE OVERSIGHT)

- ❖ 2 CFR Part 200.318(b)
 - ❖ Occurs after contract is awarded
 - ❖ Ensures contractors perform as required by terms, conditions, and specifications of contracts/POs
 - ❖ Buy American – is the country of origin the US?
 - ❖ Is the product/price/quality as specified and quoted/bid?
 - ❖ Are deliveries as required?
 - ❖ Are USDA Foods credited to the nonprofit food service account for self-operated and FSMC contracts?
 - ❖ Are costs accurate and discounts, rebates, and credits being returned to the nonprofit food service account for all cost-reimbursable contracts, not just FSMC contracts?



PROCUREMENT STANDARDS (CONTRACTOR PERFORMANCE OVERSIGHT- CLOSER LOOK)

- ❖ 2 CFR Part 200.318(b)
 - ❖ Occurs after contract is awarded
 - ❖ Ensures contractors perform as required by terms, conditions, and specifications of contracts/POs
 - ❖ Buy American – is the country of origin the US?
 - ❖ Is the product/price/quality as specified and quoted/bid?



PROCUREMENT STANDARDS (CONTRACTOR PERFORMANCE OVERSIGHT- CLOSER LOOK)

❖ 2 CFR Part 200.318(b)

- ❖ Are USDA Foods credited to the nonprofit food service account. Self-operations and FSMC contracts.
- ❖ Are costs accurate and discounts, rebates, and credits being returned to the nonprofit food service account for all cost-reimbursable contracts, not just FSMC contracts?



PROCUREMENT STANDARDS

Summary & Questions