

PROCUREMENT 101

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This presentation basically came from the NFSMI training that I did online -- along with some help from the USDA Regional Office staff in Atlanta. It should give you a general overview of the rules and regulations that we have to follow because we participate in the School Nutrition Program.

What is Procurement?

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Basically, procurement is the multi-step process for obtaining the lowest possible price from the most responsive provider for goods and services. Any time you purchase anything whether it is food or napkins or equipment, your goal is to get the biggest bang for your buck. The 5 steps to the process are:

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1. Planning
2. Writing Specs
3. Advertising
4. Awarding The Contract
5. Managing The Contract

Now you know what procurement is and you know the steps to follow, but how do you know what rules you have to follow in order to be in compliance? It all begins with Congress and ends with you as an SFA.

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Congress – Authorizes the program and appropriates the funding for administration.

OMB – Issues financial requirements and puts out circulars that explain the requirements.

USDA/FNS – Administers the programs, implements the CFRs, and issues program regulations, policies and instructions so that there is uniformity in the way States and SFAs operate the programs.

State Agency (KDE) – Has an agreement with USDA to “pass down and enforce the federal requirements” – specifically 7 CFR Part 3016 and 3019; 7 CFR Part 210, 215, 220. The state agency must also follow state laws and regulations that do not conflict with federal requirements.

School Food Authorities (SFA) – So .. what regulations must SFAs follow?

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USDA Program Regulations		
7 CFR Part 210	7 CFR Part 215	7 CFR Part 220
210.16; 210.21	215.14a	220.16
Uniform Administrative Requirements in which we will go into more detail in a few slides. <u>Slide 6</u> -- Government Wide Federal Requirements		
OMB Circulars A-102, A-110, A-87, A-122	OMB Circulars A-102, A-110, A-87, A-122	OMB Circulars A-102, A-110, A-87, A-122
State Laws, Regulations, and Policies that are not in conflict with Federal requirements		
Local Laws, Regulations, and Policies that are not in conflict with Federal requirements		

Congress is going to ensure the requirements are properly implemented and are passed down from Federal to State to Local Levels:

- To make sure that program benefits are widely available to eligible children & schools , and,
- To make sure the benefits are used efficiently and effectively without waste or abuse.

Federal laws and regulations require State Agencies and School Food Authorities to comply with procurement requirements for all goods and services purchased with federal funds. These regulations are meant to ensure the large amounts of money spent on the School Nutrition Programs by American taxpayers is being used as effectively and efficiently as possible.

If at any point during the procurement process an error is made or bad judgment is used, there are many, many people ready to accuse the agency of bad faith or worse!

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Public SFAs may follow their procurement procedures which reflect applicable state and local laws and regulations provided that the procurements conform to applicable Federal law and standards identified in **7 CFR Part 3016.36** and **Part 3016.60**. SFAs **MUST** compare their state and local requirements against the Federal requirements and follow the more restrictive. In cases where state and local rules are not consistent with Federal Requirements, the SFA must substitute the Federal Requirement if it is more restrictive.

Example – Small Purchase Threshold

- Federal Threshold = \$100,000
- State Threshold = \$40,000; however, currently operating at \$20,000
- Local Threshold = \$20,000

SFAs must follow the most restrictive threshold. Small Purchase shall not exceed \$20,000.

Private Non-Profits are directed to follow your normal procurement procedures if they are AT LEAST as stringent as the Federal requirements. If they are not, you must follow the Federal requirements. Please refer to 7 CFR 3019 for more guidance on what is allowable.

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Requirement	7 CFR Part 3016 – (Public)	7 CFR Part 3019 – (Non-Profit)
Competition in all procurements	3016.36(c)	3019.43
Award only to responsible & responsive vendors	3016.36 (b) (8)	3019.44(d)
Written selection procedures	3016.36(c)(3)	3019.44(a)(3)
Code of Conduct	3016.36(b)(3)	3019.42
Recordkeeping	3016.36(b)(9)	3019.46
Contract Administration System	3016.36(b)(2)	3019.41
Prohibition on geographic preference, unless specifically permitted by Federal law (such as 2008 Farm Bill)	3016.60 and 3016.36(c)(2)	Not addressed

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- Federal Requirements – Define the minimum requirements.
- State Requirements -- Model Procurement Code – KRS 45A.100
- Local Requirements – KRS 45A.385
- Program Specific Requirements
 - National School Lunch Program – 7 CFR Part 210 – *Includes Buy American Provision*
 - Special Milk Program – 7 CFR Part 215
 - School Breakfast Program – 7 CFR Part 220
 - Food Distribution – 7 CFR Part 250

Buy American Provision

7 CFR 210, 220, 250 requires schools to purchase domestically grown processed foods to the maximum extent possible where over 51% of the final processed product is to consist of ag commodities grown in the US. You still must follow procurement rules except when:

1. The product is not produced or manufactured in the US in sufficient quantities of satisfactory quality, or
2. When competitive bids show that the cost of the US product is significantly higher than the cost of a comparable foreign product.
3. Procuring agency must have third party documentation of the lack of availability or excessive pricing. Not a statement from the vendor.

The Buy American provision must be correctly applied to the procurement process to ensure that its application does not restrain or restrict competition!

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SFAs in the School Nutrition Programs Must Operate a Non-Profit School Food Service Account. Keep in mind this is “federal funds”.

Program Regulation 7 CFR 210.2 says “a non profit school food service” is a food service operated primarily for the benefit of enrolled children. Any money deposited into the account or earned from the operation of the food service account can only be used to operate or improve the food service by:

- Purchasing food , supplies, and equipment required for meal prep and service;
- Purchasing prepared meals from vendors;
- Paying FSMC to operate their food service;
- Paying for labor and operational costs;
- Paying indirect costs

*The definition of “revenue” for this account is **ANY AND ALL** funds received by the non-profit school food account (which includes meal reimbursements, Student and Adult meal payments, State and Local Funds, Payments for ala carte items, Returns because of discounts, rebates, incentives, etc.) .Money **MUST BE USED** to obtain food and other goods and services for use in the Child Nutrition Program.*

The balance of this account must not exceed 3 months average expenditures. If the balance is in excess, the SFA must spend the excess on improvements to the food service or reduce prices charged to children paying for school meals. However, the SFA cannot use the money to purchase land or buildings, or to construct buildings or perform major renovations. Nor can the revenue be used to meet a Federal Matching Requirement. Consult with the SA on what would be allowable if you find yourself in this type of situation.

So now you know what requirements must be followed, let's talk about "good procurement".

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There are 4 major principles of Good Procurement. They are Full and Open Competition, Fairness and Integrity, Responsive and Responsible Vendors, and Transparency.

The most important principle is Full and Open Competition so we will start with that one.

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Competition is the goal of all federal procurements because it leads to higher quality goods at a lower cost. What does that mean? It means that:

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- All vendors are on the same playing field (responding to the same specifications) and have the same opportunity to compete.
- Procurement procedures must not unduly restrict or eliminate competition

Why Competition Is Required

Competition is required in all federally funded procurements:

- Accountability to Taxpayers (competition is more likely to offer lower prices)
- More and/or higher quality goods or services
- Protection of business & health of the economy

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SFAs benefit from the competitive process in two ways:

1. can directly influence their costs in the procurement of food

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2. may be able to purchase higher quality goods or services at a lower price

Example of how competition Directly Influence Costs

- If an SFA has food costs of \$1 per meal, it can buy food for 100,000 meals for \$100,000.
- If, through improving competition in its procurement process, the SFA can buy the same meals for 80 cents per meal, the SFA can now purchase 100,000 meals for \$80,000.
- If the SFA starts offering higher-quality meals to students, more students may want to eat in the cafeteria.
- So... competition may also lead to participation increase, which in turn increase the SFA's:
 - revenue (both students' payments and meal reimbursement),
 - ability to improve the Program, and
 - ability to make the Program cost-effective and possibly lead to self-sufficiency (i.e. operating the Program without relying on large sums of money from the district's general fund).

Example of how Competition Can Lead To Higher Quality Goods

- One State agency established a Statewide purchasing cooperative for its school districts, to help smaller districts have more “buying power”.

- The first time the Statewide contract for spices was to be signed, the Commissioner was blown away at the contract's cost:
 - The Commissioner said, "The Statewide cooperative's contract for spices for the year is \$57,000! How many spices is the cooperative getting for \$57,000?"
 - The State Director responded, ""The same amount that all the individual school districts in the State bought last year for a total of \$109,000 for the full year. This year, each school district is paying an average of \$368 for spices compared to an average of \$703 last year."

So basically, competition STRETCHES DOLLARS AND PROVIDES BETTER MEALS

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Another principle is **Fairness and Integrity** . The procurement process cannot be both effective and self serving. This is very important! No matter how much an SFA official may want a particular product or vendor, other comparable products and vendors must have the same opportunity to sell their products to the SFA.

SFAs must ensure that ethical safeguards exist at all levels and in all aspects of the procurement process. If a SFA uses the local procurement rules there must be a code of standards of conduct (3016.36(b)(3)) written and adhered to in the procurement process . If unethical action is identified, the SFA must take immediate action to correct it.

SFA officials sometimes think that the federal requirements say that every procurement must be awarded on the basis of price. But sometimes the lowest bidder may not provide the best product. Another principle of Good Procurement is that awards should only be made to **Responsive and Responsible Vendors.**

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This means that awards are not always based on lowest price. For a vendor to be both responsive and responsible, they must be able to meet the specs described for the goods or service and they must be both willing and able to successfully fulfill the terms and conditions of the procurement.

In order to determine a contractor “responsive”, you have to make sure the vendor is able to meet all the requirements set forth in the bid (informal, formal and non-competitive), make sure the bid was submitted on time, and make sure that the bid includes all the components that was requested.

In order to determine a contractor “responsible”, you must investigate their Integrity, compliance, past performance, and financial resources

If a contractor is deemed “not responsible” the SFA must:

1. Carefully document the reasons
2. Declare the vendor ineligible for an award

Finally, the last of the 4 principles is **Transparency**.

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Everything done by the SFA must be:

- Clear
- Above-board
- Out in the open

For a "good procurement," an SFA not only needs to follow the procurement principles but they must also follow certain practices such as:

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- thoroughly understand and communicate its needs,
- thoroughly understand the market and seek as many **respondents** as possible in order to foster maximum free and open competition,
- review its current resources and services to ensure that only necessary purchases are made,
- use the procurement process to obtain high-quality goods or services at the lowest possible price,
- write clear evaluation criteria that are not unduly restrictive,

- develop a **solicitation** that contains specifications that are clear and not unduly restrictive,
- publicize the solicitation appropriately to the widest possible audience,
- allow adequate time for respondents to prepare responsive bids or proposals,
- ensure transparency in the opening and evaluating of bids and proposals, and document the entire process.

We've discussed the rules and regulations that govern procurement, the principles of good procurement and good procurement practices, but in order to carry out a competitive procurement, SFAs must also have in place Written Policies and Procedures. The written policies must:

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- Foster competition in every procurement action;
- Require that rationale for procurement method is documented;
- Establish written selection procedures for each procurement method which includes a clear description, identify requirements, identify other evaluation criteria;
- Result in awards made only to responsive and responsible contractors;
- Fully document all procurement actions;
- Keep documentation on file for the life of the contract, and;
- Record Retention Requirements OR 3 years after the final payment OR Longer if audit findings have not been resolved;
- Have a contract administration system in place;
- Have bid protest procedures.

The written procedures must:

- Follow Program Regulations and appropriate procurement requirements (Federal, state or local);
- Be consistently followed;
- Result in procurements conducted fairly;
- Enable the goods and services procured to meet the needs at the best possible price;

- Include a Code of Conduct;

Just like there are good procurement practices, there are also many prohibited practices.

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Here are some common practices that **ARE NOT ALLOWED!**

1. Unreasonable Requirements – such as excessive bonding or excessive education and experience
2. Geographic Preference – such as local vendors receiving bonus points when being evaluated.

NOTE: Geographic Preference can be used where applicable Federal statutes expressly mandate or encourage geographical preference such as The Farm Bill (locally produced farm products only. See [Final Rule: Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs \(April 22, 2011\)](http://www.fns.usda.gov/cnd/governance/regulations/2011-04-22.pdf) at <http://www.fns.usda.gov/cnd/governance/regulations/2011-04-22.pdf>

3. Limiting the response time of a solicitation –you don't allow enough time for all potential vendors to respond.
4. Dividing a procurement to keep under the small purchase threshold – this is illegal and is called split purchasing.
5. Awarding a contract without advertising

NOTE: Unless justified as a sole source due to an emergency with SA approval.

6. Awarding a contract on the basis of only one of the evaluation criteria – such as awarding a contract based on cost when the vendor doesn't meet the other specifications.
7. Getting a cost quote from only one vendor under small purchase procedures where there are actually more than one vendor that is capable of responding. Consult with the SA if you incur a situation where you have only one respondent to a solicitation regardless of the procurement method.

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8. Not providing the same information to all vendors – such as all specifications or questions and answers from other potential bidders.
9. Failing to comply with applicable state or local rules – self explanatory.

10. Releasing the contents of a bid before the public opening – self explanatory.
11. Using outdated pre-qualified vendor lists.
12. Using vendor listings that do not include all potential vendors – which is basically limiting the selection.
13. Allowing changes AFTER a bid is awarded that could have affected the outcome of the award had the other vendors had the opportunity to respond to the modified provision. This is called having a material change to the contract.

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14. Allowing a potential vendor to draft upcoming procurement specifications and also participate in the bidding.
15. Using the school food service account to pay for expenses that result from improper planning or procurement– you didn't realize you were out of X product and don't have time to bid so you just go out and purchase X and have to pay more for it.

Now you know what you should and should not do in procurement, let's talk about the phases of the actual procurement process.

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There are Four Phases of Procurement: Get Ready, Solicit, Award & Manage

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1. **Plan** – know what's needed and when (be specific). Know approximately how much it's going to cost.
2. **Solicit** – Provide detailed specifications and use the appropriate procurement method. Clearly describe the product requirements, vendor delivery expectations and be sure to incorporate a little flexibility.
3. **Award** – All awards must go to a vendor that is both responsive and responsible and has the lowest price. Something else to note about awarding contracts. Sometimes State Agency review is mandatory and other times it is discretionary.

Mandatory when:

Non competitive negotiation is requested; SFA submits a request to limit competition; Procurement deemed sole source; When the SFA proposes a contract for a FSMC.

State Agency Pre-Award Reviews are **discretionary** when:

The State Agency imposes a review requirement; an award exceeding the federal threshold is awarded without competition; Non-competitive negotiation is not used when only 1 bid is received; Proposed contract modification changes the scope of work.

4. **Manage** – Contract Administration -- Right quantity, on time, to the right location, meets quality specs, meets substitution policy, etc.

Not only are there 4 phases of procurement, there are also 4 methods of procurement...and choosing the best procurement method is SO IMPORTANT for you to get the biggest bang for your buck -- but you need to know that one form of procurement is not superior to another.

Goods, or tangible items, are usually bought using either the small purchase method or the IFB Method. Professional Services, or a need for you to accomplish some sort of a task, are usually purchased using the RFP method or Competitive Negotiation.

You need to choose the right method based on the type of procurement. BUT REMEMBER -- Regardless of the method you choose, **ALL METHODS MUST BE COMPETITIVE!!!!**

When you are unsure which would method to follow call KDE for assistance.

4 Methods of Procurement :

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Small Purchase, Competitive Sealed Bid (IFB), Competitive Negotiation (RFP), Non-Competitive Negotiation (Sole Source)

Slide 27 – Informal Flowchart

The small purchase method is sometimes referred to as an “informal” procurement. With an informal procurement, you follow Steps 1 – 5.

Slide 28 – Formal Flowchart

The other 3 methods are considered “formal” procurements. With formal procurements, you follow steps 1-5.

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1. **(Informal) Small Purchase Method** – Can be used for any category not expected to exceed the small purchase threshold. The small purchase procedures aren’t as formal as RFPs or IFBs –

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2. But they are still competitive
3. A solicitation document is still required that must include:
 - a. A complete description of what’s required to be purchased
 - b. The date by which the goods or services must be provided
 - c. Any other pertinent conditions such as delivery day, location, times, size, quantity, etc.
4. There must be an adequate number of vendors – KY prefers at least 3 – contacted and documented.
5. The award must be documented and maintained by the SFA.

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THE PRACTICE OF SPLIT PURCHASING CAN LAND YOU IN PROCUREMENT JAIL!!!

Let’s talk about the formal methods of procurement.

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First Formal Method -- Competitive Sealed Bid (IFB) – Applicable for any category that exceeds the small purchase threshold when the following 3 conditions exist:

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- a. Realistic purchase description is available or developed.
- b. Must announce solicitation through public notification to receive more than one response to the solicitation.

- c. Results in a firm-fixed contract. This means that the selection of the vendor can be made primarily on the basis of price.

If these conditions are met, proceed with the sealed bid which:

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- o MUST be advertised publically
- o Bids MUST be solicited from adequate number of vendors
- o Invitation for Bid MUST clearly define items or services required along with purchasing conditions.
- o Bids MUST be opened publically as stated in IFB.
- o Firm-Fixed contract award MUST be made by written notice to responsible bidder.
- o Method and factors of award MUST be clearly described and documented, i.e., lowest bid.

All bids may be rejected with sound documented reasons in the best interests of the program.

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The Second Formal Method -- Competitive Negotiation (RFP) -- Used when the annual cost exceeds the small purchase threshold and when the Sealed Bid method is not appropriate – when you cannot specifically describe what you want up front – where you want the vendors to propose solutions that meet your needs. When an RFP is used, price isn't the only factor to be evaluated. Examples of other factors to be considered might include Experience, Qualifications, Availability, References, etc. If this type of procurement method is used:

- o Advertised
- o Proposals solicited from a minimum of 2 vendors,
- o Identify all evaluation factors and how they will be weighted
- o Evaluation Team
- o Contract Awarded to Highest Scored Proposal

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The last formal method -- Non Competitive Negotiation (Sole Source) -- Used ONLY after other procurement methods are determined to be unsuccessful. MUST BE JUSTIFIED IN WRITING!

- Only 1 vendor capable of providing the item/service.
- Public Emergency Exists Which Doesn't Permit Timely Competition
- Competition Lacking

Let me warn you ... just because you are “not aware” of another vendor that can provide what you want, doesn't mean that they can be deemed sole-source!! This is another instance where you might wind up in procurement jail. Consult with the SA if you find yourself in a situation like this.

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To end this presentation, we all need to follow the rules that have been passed down to us because we participate in the School Nutrition Programs – and we are evaluated on how well we follow the rules!!

USDA/FNS reviews KDE through Management Evaluations – 7 CFR Part 210.29.

KDE reviews SFAs through CREs 7 CFR 210.18 & 19

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Thank you!

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