2 CFR 200.318-320 Procurement

5200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(k) The actual cost of materials; and

(l) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.
Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
5200.320  Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement:

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(v) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of, and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practicable;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposal received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity, or
4. After solicitation of a number of sources, competition is determined inadequate.
(a) General. State agencies and school food authorities shall comply with the requirements of this part and 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, which implement the applicable requirements, concerning the procurement of all goods and services with nonprofit school food service account funds.

(b) Contractual responsibilities. The standards contained in this part and 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, do not relieve the State agency or school food authority of any contractual responsibilities under its contracts. The State agency or school food authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

(c) Procedures. The State agency may elect to follow either the State laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 2 CFR 200.326. Regardless of the option selected, States must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements 2 CFR 200.236 and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Award are followed. A school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with nonprofit school food service account funds adhere to the standards set forth in this part and in 2 CFR part 200, subpart D, as applicable. School food authority procedures must include a written code of standards of conduct meeting the minimum standards of 2 CFR 200.318, as applicable.

(1) Pre-issuance review requirement. The State agency may impose a pre-issuance review requirement on a school food authority’s proposed procurement. The school food authority must make available, upon request by the State agency, its procurement documents, including but not limited to solicitation documents, specifications, evaluation criteria, procurement procedures, proposed contracts and contract terms. School food authorities shall comply with State agency requests for changes to procurement procedures and solicitation and contract documents to ensure that, to the State agency’s satisfaction, such procedures and documents reflect applicable procurement and contract requirements and the requirements of this part.

(2) Prototype solicitation documents and contracts. The school food authority must obtain the State agency’s prior written approval for any change made to prototype solicitation or contract documents before issuing the revised solicitation documents or execution of the revised contract.

(3) Prohibited expenditures. No expenditure may be made from the nonprofit school food service account for any cost resulting from a procurement failing to meet the requirements of this part.

(d) Buy American—(1) Definition of domestic commodity or product. In this paragraph (d), the term ‘domestic commodity or product’ means—

(i) An agricultural commodity that is produced in the United States; and

(ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) Requirement. (i) In general. Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(ii) Limitations. Paragraph (d)(2)(i) of this section shall apply only to—

(A) A school food authority located in the contiguous United States; and

(3) A purchase of domestic commodity or product for the school lunch program under this part.

(3) Applicability to Hawaii. Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this part.
# Standards of Conduct Checklist for non-Federal Entities

## 2 CFR 200.318 General Procurement Standards

These items must be included in the non-federal entities written standards of conduct for employees, officers or agents engaged in the selection award and administration of contracts and procurement.

<table>
<thead>
<tr>
<th>Standard Area</th>
<th>Requirements</th>
<th>Included in Policy/Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflicts of Interest</td>
<td>No employee, officer or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent or any member of his or her immediate family his or her partner or an organization which employs or is about to employ any of the parties indicated herein has a financial or other interest in or tangible personal benefit from a firm considered for contract.</td>
<td></td>
</tr>
<tr>
<td>Gratuities</td>
<td>The officers, employees and agents of the non-federal entity may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts. However non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.</td>
<td></td>
</tr>
<tr>
<td>Disciplinary Actions</td>
<td>The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees or agents of the non-federal entity.</td>
<td></td>
</tr>
</tbody>
</table>
### General Procurement Standards for Non-Federal Entities: 2 CFR 200.318

#### Procurement Procedures for Non-Federal Entities

<table>
<thead>
<tr>
<th>Procedure Area</th>
<th>Requirements</th>
<th>Included in Policy/Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Documented Procedures</td>
<td>Must use own documented procurement procedures which reflect applicable laws and regulations, provided that the procurements conform applicable Federal law and standards identified in 2 CFR 200.318.</td>
<td></td>
</tr>
<tr>
<td>Maintain Oversight</td>
<td>Must maintain oversight to ensure contractors perform in accordance with terms, conditions and specifications of their contracts or purchase orders.</td>
<td></td>
</tr>
<tr>
<td>Standards of Conduct</td>
<td>Must maintain written standards of conduct. See below.</td>
<td></td>
</tr>
<tr>
<td>Acquisition of Unnecessary Items</td>
<td>Must avoid acquisition of unnecessary or duplicative items.</td>
<td></td>
</tr>
<tr>
<td>Greater Economy</td>
<td>Encouraged to enter into state and local intergovernmental agreements.</td>
<td></td>
</tr>
<tr>
<td>Surplus Property</td>
<td>Encouraged to use Federal excess and surplus property.</td>
<td></td>
</tr>
<tr>
<td>Value Engineering</td>
<td>Encouraged to use value engineering in contracts for construction projects.</td>
<td></td>
</tr>
<tr>
<td>Responsible Contractors</td>
<td>Must award contracts only to responsible contractors.</td>
<td></td>
</tr>
<tr>
<td>History of Procurement</td>
<td>Must maintain records sufficient to detail the history of procurement.</td>
<td></td>
</tr>
<tr>
<td>Time/Materials Contract</td>
<td>May use a time and materials contract only after....</td>
<td></td>
</tr>
<tr>
<td>Settlement of contract Issues</td>
<td>Must be responsible for the settlement of all contractual issues.</td>
<td></td>
</tr>
</tbody>
</table>
# Procurement SOP

**Product:**

**Personnel:**

**Plan:**

<table>
<thead>
<tr>
<th>Estimated Purchase Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purchase Method</strong></td>
<td>Micro</td>
</tr>
<tr>
<td><strong>Contract Type</strong></td>
<td>Fixed Price</td>
</tr>
<tr>
<td></td>
<td>Firm Economic Adjustment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Solicitation Release Date</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contract Date</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Steps:**

1. 
2. 
3. 
4. 
5. 

**Implementation Date:** ___________________________  **Initials:** ___________________

**Review/Revise Date:** ___________________________  **Initials:** ___________________

**Review/Revise Date:** ___________________________  **Initials:** ___________________