

**TRANSYLVANIA COUNTY SCHOOLS
PROCUREMENT PLAN
SCHOOL NUTRITION PROGRAM**

The procurement plan described on the following pages (pages 1 through 28) was adopted by the Board of Education (BOE) and will be implemented effective as of the date of signing and from that date forward until amended. All procurement processes and activities will be consistent with the principles of free and open competition. The SFA will avoid unreasonable conditions that restrict competition. All reasonable efforts will be made to solicit bids, proposals and/or quotes from as many qualified vendors as possible; all qualified vendors are invited to respond to solicitations.

The procurement of all goods and services using School Nutrition funds will be carefully documented during each phase of the procurement process. The BOE shall award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed solicitation. The BOE will restrict awards, sub-awards and contracts with any party that is debarred, suspended or otherwise excluded from participation in Federal assistance programs or activities. All parties involved in the procurement process involving School Nutrition funds will comply with a written code of ethics/conduct, which includes a conflict of interest policy. Adherence with the code of ethics/conduct and conflict of interest policies is fundamental to the integrity of the procurement process.



Chair, Board of Education/Directors



Date



Superintendent of Schools



Date

**TRANSYLVANIA COUNTY SCHOOLS
DEPARTMENT OF SCHOOL NUTRITION SERVICES
PROCUREMENT PLAN**

The Department of School Nutrition Services (hereinafter referred to as the School Food Authority's (SFA) plan for procuring goods and services for use in the School Nutrition Program is described in detail herein. The plan includes all Federal food-assistance programs administered by the SFA. Adhering with the procurement plan is intended to ensure free and open competition, in an environment that promotes transparency in all transactions, documented comparability for ethical decision-making, and adequate documentation to substantiate the allowable use of School Nutrition funds.

Part I: Code of Ethics/Conduct governing the procurement of goods and services using School Nutrition Funds

- A. The following conduct will be expected of all persons who are engaged in the award and administration of contracts supported by School Nutrition funds.
 - 1. No employee, officer or agent of the Local Education Agency (LEA) shall participate in the development of a solicitation, selection of a recipient, and/or administration of a contract supported by School Nutrition funds if a conflict of interest, real or apparent, would be involved.
 - 2. Conflicts of interest arise when a member of the LEA or SFA has a financial or other interest in the contractor selected for the award, conflicts of interest would include:
 - a. Any employee, officer or agent of the contractor;
 - b. Any member of the immediate family of the contractor;
 - c. The contractor's partner; and/or
 - d. An organization which employs or is about to employ one of the above.
 - 3. Employees, officers or agents of the LEA and SFA shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. (*Note: the SFA may establish local policy indicating School Nutrition personnel may accept an unsolicited item of nominal value where the exact value is established and recorded in this procurement plan or participate in a group event where the financial interest is not significant, and the event is open to all attendees or participants.)
 - 4. It is acknowledged that the penalty for violation of the Code of Ethics/Conduct may include any of the following:
 - a. Reprimand by Board of Education; or
 - b. Dismissal by Board of Education; or
 - c. Any legal action necessary.
- B. The Transylvania County Schools Code of Ethics and Conflict of Interest

Policies are shown in Attachment A.

Part II: Procurement Methods used to Purchase Goods and Services using School Nutrition funds

A combination of formal and informal purchasing methods will be used to procure all goods and services on behalf the non-profit School Food Authority (SFA). Formal purchasing methods will include the use of an Invitation for Bid (IFB) or a Request for Proposal (RFP). As required by 2 CFR 200.317 – 200.326 and NC General Statute, Article 8, Chapter 143, formal purchasing methods will always be used for any purchase that exceeds the lesser of the State’s small purchase threshold of \$90,000.00 or the SFA’s board-approved small purchase or simplified acquisition threshold. For purchases below the lesser of the State’s simplified acquisition threshold of \$90,000 or the board-approved simplified acquisition threshold, informal procurement procedures involving a documented Request for Quote (RFQ) will be utilized when seeking competitive pricing. Micro-purchase procedures as defined in 2 CFR 200.320 may be used for goods or services reflecting separate or aggregate purchases in an amount equal to or less than \$10,000.00 in aggregate on an annual basis. Non-competitive negotiation or sole source procurement is rare and requires the prior written approval of the North Carolina Department of Public Instruction (NCDPI) prior to purchase and/or contract execution. Contracts will be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the base solicitation; consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources. All procurement transactions (formal, informal, sole source and emergency) will be thoroughly documented and available for review and/or audit by Federal, State and local authorities upon request.

The SFA will make all efforts to avoid the acquisition of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach, including purchases made using existing contracts that were competitively procured by the State of North Carolina and in accordance with State General Statute. Where feasible, the SFA will consider the purchase of gently-used or surplus equipment in lieu of purchasing new equipment.

Overly-prescriptive specifications will be avoided to promote competition. When it is impractical to make a clear, definitive description, a “brand name or equivalent” description will be used as a means to define a product or service. In this case, the specific features of the named brand, which must be met by contractors, must be clearly stated. In order to ensure objective contractor performance, any potential contractor that develops or drafts specifications, requirements, statements of work or other solicitation documents or resources, will be excluded from competing for such procurements. All solicitation documents will identify the specific requirements which the contractor must fulfill and any other factors that will be considered when evaluating quotes, bids, or proposals.

A. Formal Procurement Methods

Formal methods of procurement including an Invitation for Bid (IFB) or a Request for Proposal (RFP) will be used for any and all purchases in excess of the SFA's simplified acquisition (or small purchase) threshold OR the State simplified acquisition (or small purchase) threshold of \$90,000.00, whichever is less.

The SFA's Simplified Acquisition Threshold is \$90,000.00; this amount will be used to determine whether formal or informal purchasing methods will be used.

Formal procurement methods will be applied on the basis of a/an:

- Centralized or administrative office purchase
- Individual school purchase
- Multi-School systems purchases
- Previously competitively-procured State contract
- Combination of above (specify):
- Other: North Carolina Purchasing Alliance

An IFB will be used when the sole criteria for awarding a contract to the most responsive, responsible bidder is the cost of goods or services. An RFP will be used when other factors, objective and subjective, will be used to award the contract. When using an RFP, cost will be a significant factor in the contract award along with other evaluation criteria. The specific evaluation criteria will be provided as part of the original solicitation to enable all potential contractors to clearly understand the basis of the award.

Given the potential to purchase more products and services above the SFA's Simplified Acquisition Threshold of \$90,000.00 using School Nutrition funds, it will be the responsibility of the school nutrition purchasing clerk to document the specific cost of a purchase to determine and document which formal procurement method will be used and the justification for doing so.

The School Nutrition Director will perform a cost analysis for every procurement action in excess of the SFA's simplified acquisition threshold where formal procurement methods will be used; the documentation of the cost analysis will be kept on file with other procurement documents and will be subject to review and/or audit.

When a formal procurement method is required, the following procedures shall apply:

1. A public advertisement is required to solicit bids or proposals for all purchases over the Local Education Agency's (LEA) simplified acquisition (or small purchase) threshold of \$10,000.00. The announcement (advertisement or legal notice) will contain a general description of items to be purchased; specific procedures for submission of a bid or proposal; deadline for submission of sealed bids or proposals, and the address where complete specifications and bid/proposal instructions may be obtained and the contact person to whom questions may be addressed.

An announcement of an Invitation for Bid (IFB) or a Request for Proposal (RFP) will be placed on the Transylvania County Schools website www.tcsnc.org (and

may be placed in other widely publicized communications) to publicize the intent of the School Food Authority to purchase needed items. The legal notice of advertisement for bids/proposals will be run in these media outlets for no less than 30 days if on website and no less than one paid advertisement if in a newspaper or other print publication. (State Purchasing Alliance announcements may be sent out at the state level.)

2. In an IFB or RFP, each vendor will be given an opportunity to submit a bid or proposal using the same complete, adequate and realistic specifications.
3. Specifications will be developed and provided to all potential contractors desiring to submit bids or proposals for the products or services requested. Vendors will be selected to receive the solicitation using the following methods:
 - a. Prior acceptable service with the SFA (example); and/or
 - b. Interest in submitting a bid, the apparent ability to fulfill the bid or proposal requirements and no apparent exclusions or debarments or conflicts of interest.

Any party that assists the SFA in the development of the written specifications, product descriptions or services to be provided, will be disqualified from submitting bids or proposals for such products or services. Potential vendors are prohibited from developing or assisting in the development of specifications, product descriptions or services to be provided.

4. If any potential vendor is in doubt as to the true meaning of the specifications or purchase conditions, an interpretation will be provided by the Director of School Nutrition Services or Finance Manager. If a single vendor requests clarification on an item in an IFB, RFP, or other solicitation, a response will be provided to all potential vendors that originally requested and/or received the solicitation.
5. The IFB or RFP will clearly define the purchase conditions. The following shall be addressed in the solicitation and final contract documents:
 - a. Intent of the procurement activity
 - b. Contract period
 - c. SFA is responsible for all contracts awarded (statement)
 - d. Date, time and location of pre-bid or pre-proposal meeting (if any)
 - e. Date, time and location of bid opening and bid/proposal submission procedures with SFA contact information
 - f. How the vendor is to be informed of bid/proposal acceptance or rejection
 - g. Type of contract (i.e. fixed price with firm price for delivery, etc.)
 - h. Specific requirements potential contractor must fulfill in order for the bid or proposal to be evaluated
 - i. Statement indicating any and all bids or proposals may be rejected at the discretion of the SFA

- j. Benefits to which the SFA will be entitled if the contractor cannot or will not perform as required in accordance with the terms and conditions of the contract
- k. Statement regarding any contract extension or "rollover" options based upon the mutual agreement of both parties
- l. Statement concerning any intent for piggybacking should a reasonable need emerge
- m. Statement regarding the return of rebates, discounts and other purchase incentives to the SFA's non-profit School Nutrition account
- n. Historically Underused Businesses (HUB) Statement to involve minority businesses where possible
- o. Remedy for non-performance/termination of contract; termination provisions and the basis for any settlement for all purchases and service contracts over \$10,000.00
- p. Non-collusion statement
- q. Assurance of ethical practices statement
- r. Bid/proposal protest procedures
- s. Provision requiring compliance with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in the Department of Labor regulations required for all contracts over \$10,000.00
- t. Instrument to be used for obtaining goods or services (such as a purchase order or other system of ordering) to be described by the SFA in detail, including how the contractor will be notified using the purchase instrument
- u. Escalation/de-escalation clause for future contract renewal periods (should such be allowed) based on appropriate standard or cost index
- v. Statement of assurance of protection under Civil Rights laws
- w. Provision requiring access by duly authorized representatives of the SFA, State agency, United States Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts
- x. Method of payment (invoices, statements, etc.)
- y. Method of shipment or delivery upon contract award
- z. Delivery schedule and delivery requirements
- aa. Provision requiring contractor to maintain all required records for three years plus the current year (and any contract periods open as a result of unresolved matter) after final payment and all other pending matters are closed for all negotiated contracts
- bb. Bid/proposal Certification form
- cc. Specifications that are sufficient to obtain the exact goods or services needed, but not so detailed as to restrict competition
- dd. Product/service specifications to include approved brand or equivalent, quantity, quality, packaging, pricing (unit and extended), procedures for documenting/pre-approving any substitutions or deviations
- ee. Provision requiring the contractor to recognize mandatory standards and policies related to energy efficiency which are contained in the State Energy Plan

- ff. Provision requiring the contractor to recognize mandatory standards and policies related to energy efficiency which are contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act (PL 94-165)
 - gg. All contracts over \$100,000.00 will require compliance with the Clean Air Act issued under Section 306, Executive Order 11738
 - hh. Signed Certificate of Lobbying for all contracts over \$100,000.00
 - ii. Signed Statement of non-collusion
 - jj. Signed Debarment/Suspension Certificate or statement included in contract or copy of Excluded Parties List System (EPLS)
 - kk. Provision requiring "Buy American" as outlined in Policy Memorandum SP 38 - 2017; specific instructions for prior approval of any and all of non-domestic products
 - ll. Provision requiring the Contractor to abide with the Jessica Lunsford Act (sample language is attached with this document)
 - mm. Provision indicating the SFA has complied with the Iran Divestment Act of 2015 (as modified).and has provided documentation the SFA is not doing business with an entity that does business with Iran.
6. The School Nutrition Director will be responsible for publicly advertising and coordinating the procurement process for all purchases using School Nutrition funds. The School Nutrition Director will be responsible for receiving and securing all bids, proposals, quotes and other collateral documents if indicated as part of the solicitation process.
 7. The School Nutrition Director will be responsible to ensure all SFA procurements are conducted in compliance with applicable Federal regulations, State General Statutes or policies of the local Board of Education and that the Procurement Checklist shown at the end of this document will be completed for each formal procurement, signed and dated by the person named above and maintained on file with the original procurement documents.
 8. The following criteria will be used to award contracts (based on bids or proposals):
 - a. Price
 - b. Prior contract performance (quality, service, etc.)
 - c. Other factors or considerations as that are set forth in this policy
 9. In awarding RFP a set of award criterion in the form of a weighted objective evaluation tool will be provided to each potential vendor in the initial solicitation documents/materials. Price alone will not be the sole basis for award, but remains the primary consideration when awarding the contract. Following evaluation and competitive negotiations, a firm fixed-price contract will be awarded to the successful vendor.
 10. Contracts will be awarded to the most responsible bidder/proposer whose bid or

proposal is most responsive to the solicitation and is most advantageous to the SFA, price, and other factors considered. Any and all quotes, bids or proposals may be rejected at the discretion of the SFA and/or LEA or appropriate governing body.

11. The School Nutrition Director is required to sign the bid tabulation of competitive, sealed bids or the evaluation criterion score form of competitive proposals signifying a fair and impartial review and approval of the successful bidder/proposer.
12. The School Nutrition Director will annually review the SFA's Written Procurement Plan in the context of current local, State and Federal regulations to ensure compliance with applicable laws. This individual will also be responsible to update the School Nutrition Procurement Plan as often as required to reflect current Federal, State and local procurement policies.
13. The School Nutrition Director and/or Administrative Assistant will be responsible for documentation that the actual product(s) or service(s) specified are received.
14. The Cafeteria Managers, Warehouse Manager, School Nutrition Director and/or Administrative Assistant will oversee compliance with the *Buy American Provision* to ensure that all procurement transactions for food when funds are used from the nonprofit School Nutrition account, whether directly by an SFA or on its behalf, must comply with the *Buy American Provision*. The SFA will include requirements of the *Buy American Provision* in documented procurement procedures, and in all procurement solicitations and contracts, including domestic requirements in bid specifications and will monitor the resulting contract to ensure non-domestic products are not substituted without prior approval of the SFA official School Nutrition Director and/or Administrative Assistant _authorized to determine whether the non-domestic item complies with the exemptions of the *Buy American Provision*.
15. Any time a previously agreed-upon item is not available, the School Nutrition Director and/or Administrative Assistant will review, select and approve the acceptable alternate. The contractor must inform the Administrative Assistant no later than prior to the placing of orders that a product is not available and that a substitute item may be considered. The Administrative Assistant and/or Nutrition Director) shall review and approve all product/service substitutions in advance and in writing to the contractor. No product or service shall be used in the School Nutrition program that was not approved, in writing, in advance by the Administrative Assistant and Nutrition Director. In the event a non-domestic agricultural product is to be provided to the SFA, the contractor must obtain, in advance, the written approval of the product from the School Nutrition Administrator.
16. Full documentation as to the reason an accepted item was unavailable, and

the procedure used in determining acceptable alternates, will be available for audit and review. The person responsible for preparing and maintaining this documentation is the Administrative Assistant.

17. The Nutrition Director and Administrative Assistant will be responsible for maintaining all documentation of the procurement process and making documents available for review during announced and unannounced program reviews.
18. When appropriate and approved by the Administrative Assistant and/or Nutrition Director, the SFA will exercise its option to purchase items that were previously competitively procured by the North Carolina Department of Administration, Purchase and Contract Division, using a duly awarded, active State Term Contract.

B. Informal Procurement Procedures

1. When the cost of products or services is less than the LEA's small purchase threshold of \$10,000.00, or the Federal micro-purchasing threshold of \$10,000, informal purchasing procedures including the Request for Quotes (RFQ) and Micro-purchasing Procedures (MPP) will be utilized.
2. When using an RFQ, the following procedures will apply:
 - a. Clearly written specifications will be prepared and provided to each potential vendor; the SFA's approved terms and conditions will also be provided to each potential vendor.
 - b. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of three (3) vendors shall be contacted.
 - c. The Administrative Assistant will be responsible for communicating with potential vendors when price quotes are required.
 - d. Price quotes will receive appropriate confidentiality before awarding a contract.
 - e. Quotes will be awarded by the Nutrition Director. Quotes awarded will be to the lowest and best quote based upon quality, service, availability, price, and other factors as noted herein.
 - f. The Administrative Assistant will be responsible for documentation of procedures to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications.
 - g. The Administrative Assistant will be responsible for documentation that the actual product(s) or service(s) specified is received.

- h. Any time an accepted item is not available, the Administrative Assistant will select and approve an acceptable alternate. Full documentation will be made available as to the selection of the acceptable item.
 - i. Bids will be awarded on the following criteria:
 - 1. Price
 - 2. Specification
 - 3. Availability
 - j. The Nutrition Director is required to sign all quote tabulations, signifying a fair and equitable review and approval of the selections.
 - k. Quotes from an adequate number of qualified sources will be obtained. Where only one (1) quote is received, the district will provide written documentation as to why there were fewer than three (3) qualified quotes.
 - l. When appropriate and approved by the Nutrition Director, the SFA will purchase items that were previously competitively procured by the North Carolina Department of Administration, Purchase and Contract Division, using a duly awarded, active State Term Contract.
3. When using MPP, the following will apply:
- a. The Nutrition Director will determine whether the aggregate amount of purchases for goods and/or services does not exceed the micro-purchase threshold of \$10,000, a micro-purchasing procedure may be utilized. In so doing, the Nutrition Director will be responsible to ensure that, under no condition, will purchases be sub-divided into amounts of \$10,000 or less in order to circumvent the formal and informal purchasing requirements.
 - b. Purchase orders may be solicited without quotes if the Nutrition Director determines such practice is consistent with micro-purchasing regulations and consistent with the SFA's written Procurement Plan.
 - c. The Administrative Assistant may purchase products and services (similar or dissimilar), purchased at once, as a single, collective unit whose aggregate cost is less than or equal to \$3,500 in a single transaction, without obtaining competitive quotes as long as the Nutrition Director determines the price to be reasonable.
 - d. The Nutrition Director shall ensure competition is achieved by distributing purchase transactions equitably among qualified sources where the price is reasonable. The Administrative Assistant will document all micro-purchases on a *Micro-purchase Tracking Form*.

- e. For purposes of micro-purchasing, a transaction shall be defined as “an occurrence in which two (2) or more entities exchange goods, services or money between or among them under an agreement formed for their mutual benefit.”
- f. The Nutrition Director agrees to contact the State agency with any questions about allowable/unallowable micro-purchases, and further agrees to maintain all documentation to substantiate micro-purchases including the following:
 - 1. Rationale for using micro-purchasing;
 - 2. Estimated cost of the item/service to be procured (indicating a one-time purchase of \$10,000 or less or the micro-purchasing threshold established by the local BOE of \$10,000 amount;
 - 3. Name and address of the vendor;
 - 4. Documentation that purchases are made from a variety of potential vendors as opposed to a single vendor for the majority of micro-purchases;
 - 5. All micro-purchases were approved by the Nutrition Director prior to the initiation of a single micro-purchase.
- g. The Administrative Assistant will be responsible for the documentation of records to fully explain the decision to use micro-purchasing and to document the micro-purchasing process and outcomes. Such records will be available for audit and review.
- h. The Administrative Assistant will be responsible for documentation that the actual product or service as specified or required was purchased and received.

C. Sole Source of Non-competitive Procurement

When it is determined and documented that a product or service is available only from a single source and when the award of a contract is not feasible under small purchase, sealed bid or competitive negotiation, sole source or non-competitive negotiation procedures will be used and the following procedures shall apply:

- 1. Written specifications for the product or service will be prepared by the SFA.
- 2. The Nutrition Director will be responsible to prepare and issue a Request for Information (RFI) or other information collection tool to objectively determine whether the product or service, as described in the written specification, is available from one or more sources.
- 3. The Nutrition Director determines the product or services specified qualifies as a sole source procurement, s/he will be responsible for reviewing the procedures to ensure all requirements for using sole source or non-competitive negotiations are met; this individual shall also be responsible for preparing appropriate documents to fully explain the decision to use the sole source

procurement process, including evidence indicating the goods or services were not available from other sources. The records will be available for audit and review.

4. A member or representative of the local Board of Education or Governing Board will approve, in advance, all procurements, with the exception of product testing purchases, that result from a sole source or non-competitive negotiation.
5. The Nutrition Director will be responsible for obtaining prior written State agency approval of the sole source or non-competitive negotiation before entering into the purchase of a good or service and will also be responsible for maintaining such documentation on file.
6. Sole source procurement may be used for one-time purchases of a new food for product testing for which there is no brand equivalent in order to obtain product samples for conducting student taste acceptance. A record of non-competitive negotiation purchase shall be maintained by the Nutrition Director. The record of non-competitive purchases shall include, at a minimum, the following:
 - a. Item name
 - b. Dollar amount
 - c. Vendor name and address, and
 - d. Written justification for non-competitive procurement
7. The Administrative Assistant will be responsible for documentation that the actual product or service specified was received.

D. Emergency or “Pressing Need” Purchases

If it is necessary to make a one-time emergency procurement as a result of a serious, unforeseen event that requires an immediate response in order to obtain goods or services to continue meal service, protect students, personnel or SFA resources, for other purposes that support program accountability and integrity, an emergency purchase shall be made and a log of such purchases will be maintained by the Administrative Assistant. The following emergency procedures shall be followed:

1. All emergency procurements shall be approved by the Nutrition Director. At a Minimum, the following emergency procurement procedures shall be documented:
 - a. Reason for the emergency
 - b. Good or service required
 - c. Cost (all costs to be included, shipping, installation, warranty, etc.)
 - d. Vendor name and address
 - e. Approval of the LEA official, if required
2. If it is necessary, in the course of a pressing need, to make an emergency purchase by means of “piggybacking” on the solicitation of another SFA, the following conditions

must exist and approved procedures must be followed and appropriately documented as follows:

- a. The SFA that originated the solicitation must have included a "piggyback provision" in the original solicitation;
- b. Documentation that a "pressing need" exists that requires piggybacking on another SFA's bid will be obtained;
- c. Approval from the SFA's governing board will be obtained and documented;
- d. Approval from the SFA that originated the IFB will be obtained and documented;
- e. Approval from the vendor that was awarded the Contract (as a result of the IFB) will be obtained and documented;
- f. A public notice of the district's *"Intent to Waive Competitive Bidding"* will be issued at least 10 days prior to the regularly scheduled governing board meeting;
- g. Approval to piggyback will be obtained and documented from the governing board during a regularly scheduled meeting following the public notice;
- h. Notification to the vendor of final approval will be issued; and
- i. A contract with the vendor will be developed.

Part III: Purchasing Cooperatives

The SFA shall be a voluntary participant in the North Carolina School Nutrition Procurement Alliance (NCPA). In doing so, the SFA shall agree to the terms and conditions established and subsequently modified by the NCPA's elected Board of Directors. The original signed agreement between the SFA and the NCPA shall remain on file in the office of the School Nutrition Administrator. (Note: If the SFA does not participate in the NCPA, this paragraph may be deleted.)

If the SFA is a member of a different voluntary procurement group or cooperative, a description of the cooperative should be included in this area of the plan. Specific roles and responsibilities associated with cooperative membership should be provided, in detail, in this location.

If the SFA plans to engage the services of a Group Purchasing Organization (GPO), the following procedures will be implemented to ensure the GPO has been competitively procured and in accordance with Federal and State procurement requirements:

Part IV: Additional Procurement Provisions

1. In order to evaluate a new product, the following method will be used:

Evaluation of specifications and tests and/or samples as necessary. Samples to be purchased by the Dept. of School Nutrition Services and testing with students for food products when reasonable and most applicable.

2. Payment will be made to the contractor when all terms and conditions of the contract have been met and verified as stipulated in the contract. (If value added features are available, payment will be based on the mutually-agreed upon value added feature. For example, if prompt payment is made, discounts, etc. are allowable.)

3. Specifications will be updated by the Nutrition Director or Administrative Assistant as products change.
4. If a product or service is not received as specified, the following procedure will be implemented:

The Nutrition Department will seek replacement or refund pursuant to the terms of the IFB, RFP or other bid documents.
5. If the SFA chooses to use the services of an entity to maximize allowable rebates, the following procedures will be implemented:
 - a. The availability of rebates will not influence any bid award.
 - b. Menus and food choices will not be unreasonably affected by the availability of rebates.
6. The Administrative Assistant will oversee the process of managing rebates provided by a third-party participant and will track all interactions with and rebates provided by said third party:
 - a. Provide written documentation to the third-party rebate provider that all rebates must accrue to the non-profit School Nutrition Account. All rebate checks must be made payable to the SFA's School Nutrition account.
 - b. Document the deposit of all rebates into the non-profit School Nutrition account.
7. The SFA will designate an individual to monitor each contract to ensure the Contractor and the SFA adhere to all terms and conditions of the contract.
8. All contracts shall result in a fixed, firm price contract and/or cost plus fixed fee contract.

Part V: Documentation and Records Retention

In all transactions except micro-purchases, the contractor shall agree to retain all invoices, records and other documents relative to the contract for a period of three (3) years after final payment plus the current year. The SFA, its authorized agents, and/or USDA auditors shall have full access to and the right to examine any of said materials during said period.

The SFA shall agree to retain all books, journals, records and other documents relative to the award of the contract agreement for three (3) years after final payment. Specifically, the SFA shall maintain, at a minimum, the following documents:

- a. Written rationale for the method of procurement;
- b. A copy of the original solicitation;
- c. The selection of contract type;
- d. The bidding and negotiation history and working papers;
- e. The basis for contractor selection; and/or rejection

- f. Approval from the State agency to support a lack of competition when competitive bids or offers are not obtained;
- g. The basis for award where cost or price is not the primary factor for the decision;
- h. The terms and conditions of the contract;
- i. Any and all contract amendments or modifications;
- j. Billing and payment records;
- k. Any history of any contractor claims; and
- l. Any history of any contractor breaches.

The SFA will complete the most current *School Nutrition Procurement Checklist* for all purchases using School Nutrition funds. The checklist should remain on file with the district's procurement documents as an indicator the SFA has taken all reasonable efforts to procure goods and services in a manner that is consistent with Federal regulations and policy. The checklist is shown in Attachment B.

Part VI: Other Procurement Requirements

- A. All contractors must agree to abide with the terms and conditions of the Jessica Lunsford Act. The vendor acknowledges that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense.
- B. The SFA will make all reasonable efforts to assure that minority businesses, women's business enterprises and labor surplus area firms are engaged in solicitations and awarded contracts when possible.
- C. The SFA and its contractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- D. All Contractors must agree to abide with the requirement for Criminal Background Checks. The vendor shall conduct criminal background checks on each of its employees who, pursuant to this Agreement, engage in any services on Transylvania County Schools property or at Transylvania County Schools events. The Contractor shall provide documentation that criminal background checks were conducted on each of its employees prior to hiring, and shall refuse employment to any person convicted of a felony or any other crime, whether misdemeanor or felony, that indicates the person poses a threat to the physical safety of students, school personnel or others. Such

checks shall include an annual check of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. The vendor shall not assign any employee or agent to provide services pursuant to this contract if (1) said worker appears on any of the listed registries; (2) said worker has been convicted of a felony; (3) said worker has been convicted of any crime, whether misdemeanor or felony, involving sex, violence, or drugs; or (4) said worker has engaged in any crime or conduct indicating that the worker may pose a threat to the safety or well-being of student or school personnel. Transylvania County Schools reserves the right to prohibit any individual employee of the vendor from providing services on Transylvania County Schools property or at Transylvania County Schools events if Transylvania County Schools determines, in its sole discretion, that such employee poses a threat to the safety or well-being of students, school personnel or others.

- E. Should the Transylvania County Schools BOE determine it is in the best interest of the SFA to outsource the preparation of meals to a qualified catering company, the SFA agrees to notify the department before procuring the services of a catering company and to use the NC Department of Public Instruction's (NCDPI) RFP Template/Contract to solicit, evaluate, negotiate and contract with the successful vendor.
- F. Should the Transylvania County Schools BOE determine it is in the best interest of the SFA to seek a for-profit Management Company to operate its non-profit School Nutrition Program, the Transylvania County Schools shall notify the NCDPI of its intent to outsource the program no later than six months prior to the desired date of the contract. Further, the LEA agrees to and agrees to use the solicitation/contract template required by the NCDPI and shall comply with the State and Federal guidelines for contracting with Management Companies. The BOE further agrees to appoint a qualified employee of the LEA to monitor the contract between the LEA and the Management Company on daily basis.

Part VII: Contract Oversight

- A. The Nutrition Director shall designate an individual by name and title who will oversee each contract using School Nutrition funds to ensure all terms, conditions and deliverables are adhered to in a manner that is consistent with the contract.
- B. Each contract will be monitored on a frequency that is established at the beginning of the contract period; any failure of the contractor to abide with the terms and conditions of the contract will be reported to the School Nutrition Administrator immediately and immediate, documented corrective action will be required and/or contract termination proceedings will begin.
- C. The SFA alone will be responsible, in accordance with good administrative practice and sound business judgment, of the settlement of all contractual and administrative issues arising out of procurements using School Nutrition funds. These issues include, but are not limited to, source evaluation, protests, disputes and claims. These standards do not relieve the SFA of any contractual responsibilities under its contracts.

D. It is understood by the SFA and LEA that neither the US Department of Agriculture nor the North Carolina Department of Public Instruction will substitute their judgment for that of the SFA and LEA unless the matter is primarily a Federal or State concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

Attachment A

Policy Code: 2120 Code of Ethics for School Board Members

The Transylvania County Board of Education (the "board") recognizes that, collectively and individually, all members of the board must adhere to a code of ethics as required by [G.S. 160A-86](#) and [G.S. 115C-47\(57\)](#).

A. Board Member Ethical Requirements

The following standards will guide each board member in the performance of his or her official duties:

1. the need to obey all applicable state and federal laws regarding official actions taken as a board member;
2. the need to uphold the integrity and independence of the board member's office;
3. the need to avoid impropriety in the exercise of the board's and board member's official duties;
4. the need to perform faithfully the duties of the office; and
5. the need to conduct the affairs of the board in an open and public manner, complying with all applicable laws governing open meetings and public records.

B. Specific Board Member Commitments

In order to implement the above standards, each member of the board commits to do the following:

1. attend all regularly scheduled board meetings insofar as possible and become informed concerning the issues to be considered at those meetings;
2. endeavor to make policy decisions while always keeping in mind the objective of providing students the opportunity to receive a sound basic education and only after full discussion at publicly held board meetings;
3. render all decisions based on the available facts and independent judgment and refuse to surrender that judgment to individuals or special interest groups;
4. model civility to students, employees, and all elements of the community by encouraging the free expression of opinion by all board members and engaging in respectful dialogue with fellow board members on matters being considered by the board;
5. respect the confidentiality of information that is privileged under applicable law and refrain from unauthorized disclosure of matters discussed in closed session;
6. work with other board members to establish effective board policies and to delegate authority for the administration of the schools to the superintendent;
7. communicate to other board members and the superintendent expressions of public reaction to board policies and school programs;
8. learn about current educational issues by individual study and through participation in programs providing needed information, such as those sponsored by the state and national school boards associations;

9. comply with [North Carolina General Statute 115C-50](#) by earning the required 12 hours of training every two years;
10. comply with [G.S. 160A-87](#) by earning two hours of ethics education within 12 months of election or appointment to the board;
11. support the employment of those persons best qualified to serve as school employees and avoid allowing personal relationships and biases to influence decision making;
12. refrain from investigating or attempting to resolve complaints received personally, but instead direct the complainant to follow the board's complaint or grievance process to resolve concerns;
13. avoid being placed in a position of conflict of interest and refrain from using the board member's position on the board for personal or partisan gain;
14. take no private action that will compromise the board or administration; and
15. remember always that a board member's first and greatest concern must be the educational welfare of the students attending the public schools.

All newly elected board members are expected to sign a code of ethics statement that includes these provisions at the organizational meeting of the board.

Legal References: [G.S. 115C-36](#), [-47\(1\)](#), [-47\(57\)](#), [-50](#); [160A-86](#), [-87](#); *Leandro v. State*, 346 N.C. 336 (1997)

Cross References: Board Member Opportunities for Development (policy 2123)

Adopted: October 19, 2015

Revised: December 14, 2015

Transylvania County Schools

Attachment A

Policy Code: 2121 Board Member Conflict of Interest

The board and each member of the board recognize that they are subject to North Carolina's criminal laws related to conflicts of interest in public office and that a board member may not use his or her office for personal benefit. The board and each member of the board further recognize that they are subject to the standards established by the federal government for recipients of federal grants as specified in policy 8305, Federal Grant Administration. The board and each member of the board understand that violation of state and federal laws and regulations on conflicts of interest may result in conviction of a crime, may render a contract of the board void, or may result in loss of federal funds. In keeping with the ethical duties specified in policy 2120, Code of Ethics for School Board Members, board members will not let any personal or business interest interfere with their duties as public officials.

All board members will abide by the following conflict of interest rules.

1. A board member will not derive a personal benefit from a contract with the school system in violation of state law [G.S. 14-234](#). Specifically, a board member will not:

- a. obtain a direct benefit from a contract that he or she is involved in making or administering on behalf of the board, unless an exception is allowed pursuant to [G.S. 14-234](#) or other law;
- b. influence or attempt to influence anyone who is involved in making or administering a contract on behalf of the board when the board member will obtain a direct benefit from the contract; or
- c. solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract.

For purposes of [G.S. 14-234](#), a board member is involved in administering a contract if he or she oversees the performance of the contract or has authority to interpret or make decisions regarding the contract. A board member is involved in making a contract if he or she participates in the development of the specifications or terms of the contract or participates in the preparation or award of the contract. A board member is also involved in making a contract if the board takes action on the contract, even if the specific board member did not actually participate in that action, unless the contract is approved under an exception to the law under which the board member is allowed to benefit and is prohibited from voting.

A board member derives a direct benefit from a contract if the board member or his or her spouse does any of the following: (1) has more than a 10 percent ownership or other interest in an entity that is a party to the contract; (2) derives any income or commission directly from the contract; or (3) acquires property under the contract. An exception is allowed for employment contracts between the board and the spouse of a board member. However, the board member

involved will not deliberate or vote on the spouse's employment contract or attempt to influence any other person who is involved in making or administering the contract.

2. A board member will not deliberate on, vote on, or otherwise engage in the selection, award, or administration of a contract supported in whole or part by federal funds when he or she has a real or apparent conflict of interest under federal rules as provided in [2 C.F.R. 200.318\(c\)\(1\)](#) and policy 8305, Federal Grant Administration. For purposes of this paragraph, a conflict of interest arises when a board member or his or her spouse, immediate family member, or partner, or the employer or pending employer of any of those persons, has a financial or other interest in or receives a tangible personal benefit from a firm considered for the contract. Any such conflict must be disclosed to the awarding agency.

For purposes of the previous paragraph, a "financial interest" means a financial interest which comprises more than five percent of the equity of the firm or business or more than five percent of the assets of the economic interest in indebtedness. It does not include an ownership interest held through a fiduciary, such as a mutual fund or blind trust, where the individual or individual's employer has no control over the selection of holdings.

3. A board member will not solicit or accept trips, meals, gratuities, gifts, favors, or anything of monetary value from (i) current contractors, subcontractors, or suppliers; (ii) any contractor, subcontractor or supplier that has performed under a contract with the board within the past year; or (iii) any contractor, subcontractor, or supplier that foreseeably may bid on a contract in the future, unless the item is an unsolicited gift of nominal value (\$50 or less) and is one of the following: an advertising item or souvenir that is widely distributed; an honorarium for participating in a meeting; a meal provided at a banquet; or other item that is clearly permitted by state and federal law.

Multiple permitted items from a single contractor, subcontractor, or supplier may not exceed an aggregate value of \$100 in a twelve-month period.

4. A board member will not solicit or accept any gifts from a current or potential provider of E-rate services or products in violation of applicable federal E-rate program gifting rules.

5. A board member will not misuse information in violation of [G.S. 14-234.1](#). Specifically, a board member will not use knowledge of contemplated board action, or information known to the member in his or her official capacity and not made public, to:

- a. acquire a financial interest in any property, transaction, or enterprise or gain any financial benefit which may be affected by the information or contemplated action; or
- b. intentionally aid another to acquire a financial interest or gain a financial benefit.

Legal References: [2 C.F.R. 200.112](#) and [200.318\(c\)\(1\)](#); [47 C.F.R. 54.503](#); FCC Sixth Report and Order 10-175; [G.S. 14-234, -234.1](#); [133-32](#); Attorney General Opinion requested by L.W. Lamar regarding [G.S. 133-32](#), the Applicability to Attorneys and Law Firms Providing Professional Services to Local Boards of Education, dated May 13, 1993

Cross References: Code of Ethics for School Board Members (policy 2120), Ethics and the Purchasing Function (policy 6401/9100), Employee Conflict of Interest (policy 7730), Federal Grant Administration (policy 8305)

Adopted: October 19, 2015

Revised: December 14, 2015; December 17, 2018

Transylvania County Schools

Attachment B

Specific Procurement Procedures for the purchase of all goods and services by the SFA.

Category of Items to be Purchased	Procurement Method to be Used	Method of Award (line item, bottom line, market basket etc.)	Frequency of Purchase
Food and Non-Food Supplies (over small purchase threshold)	Invitation for Bid (IFB) (formal)	Bottom line	Annually with option to renew based on mutual agreement of both parties
Food and Non-Food Supplies (under small purchase threshold)	Request for Quote (informal)	Bottom line	Semi-Annually or as needed
Produce	Invitation for Bid (formal)	Market Basket	Annually with option to renew based on mutual agreement of both parties. or as needed
Bread/Dairy	Invitation for Bid	Bottom line	Annually with option to renew based on mutual agreement of both parties
Locally grown produce (limited quantities; address <i>Buy American</i>)	Request for Quote	Bottom Line	As needed
Chemicals for Cleaning (over small purchase threshold)	Invitation for Bid	Bottom Line	Annually with option to renew based on mutual agreement of both parties
Chemicals for Cleaning (under small purchase threshold)	Request for Quote	Bottom Line	Semi-Annually or as needed
Commodity Processing	IFB	Line Item	Annually or as needed
Computer Hardware	RFQ or IFB (based on district's small purchase threshold)	Bottom Line	Every five years or as often as needed

Technology Service and Support	RFQ or IFB (based on district's small purchase threshold) OR Sole Source which must be approved, in advance, by the State agency	Based upon pre-established evaluation tool with numeric scores; awarded by an evaluation committee	Annually or as often as required for operations/maintenance contract or license
Consultant Services	RFQ or IFB (based on district's simplified acquisition threshold) OR Sole Source which must be approved in advance by the State agency	Based upon pre-established evaluation tool with numeric scores; awarded by an evaluation committee	Annually or as often as needed for professional support and consultation
Hood Cleaning	IFB	Bottom Line	Annually, with option to renew based on mutual agreement of both parties
Equipment Replacement Parts	Micro-purchasing procedures if a one-time purchase of less than \$10,000 or such amount as established as the micro-purchase threshold by the local BOE in the amount of \$10,000 dollars		Annually, or as often as needed. With option to renew based on mutual agreement of the parties if tied to Repair services agreement.
Smart Snack-compliant vending	RFQ	Bottom Line	Annually, with option to renew based on mutual agreement of both parties
Equipment Repair	RFQ	Lowest Price combined with reliable, and responsive service	Annually, with option to renew based on mutual agreement of both parties
Uniforms	Micro-purchasing procedures if a one-time	Lowest price submitted by the most responsive,	Annually or as needed

	<p>purchase of less than \$10,000; if purchase is greater than micro-purchase level and less than small purchase threshold, use RFQ.</p>	<p>responsible bidder (IFB) OR scored evaluations if using a RFP</p>	
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Note: All categories of purchases used by the SFA must be included in the table shown above.

Attachment C

Procurement Checklist

Goods/Services to be procured: _____

Procurement date: _____

Person overseeing procurement process: _____

This checklist will be used when preparing solicitation documents, conducting informal and formal procurements, evaluating bids and proposals and executing contracts that involve the use of School Nutrition Funds.

Procurement Plan:

- _____ Written procurement plan
- _____ Authorized purchaser(s) specified
- _____ Detailed procurement methods to be used (quotes, IFB, RFP, micro-purchasing, non-competitive negotiation) including detailed procedures for each purchasing method
- _____ Advertising procedures
- _____ Award method clearly described (i.e., line item, bottom line, market basket analysis or written evaluation of product/service)
- _____ Vendor notification of award/non-award of contract
- _____ Code of ethics/conflict of interest policy
- _____ Instructions for documentation and record-keeping
- _____ Assignment for Contract oversight
- _____ Assurance of compliance with all Federal procurement policies
- _____ Assurance of compliance with all State procurement policies
- _____ Other local requirements

Procurement Procedures:

- _____ Letter of invitation
- _____ Intent of procurement activity
- _____ Contract time-period
- _____ Bid/proposal/quote submission procedures (i.e. sealed bid, written, etc.)
- _____ Pre-bid/proposal meeting date/time/location (if applicable)
- _____ Bid opening date/time/location; Proposal opening procedures
- _____ Contact information
- _____ Civil Rights Statement
- _____ Other local requirements

Terms and Conditions:

- _____ Certification regarding disclosure of lobbying (\$100,000+)
- _____ Debarment/suspension certification form (\$25,000+)
- _____ Non-collusion statement
- _____ Assurance of ethical practices

Procurement Checklist (continued)

- _____ Escalation/de-escalation clause
- _____ Price determination statement (fixed, fixed with firm price for delivery, etc.)
- _____ Contract Extension or "roll-over" clause if warranted
- _____ Buy American statement and instructions
- _____ Bid/proposal protest procedures
- _____ Remedy for non-performance/termination of contract
- _____ HUB statement to involve minority business where possible
- _____ "Equal Employment Opportunity" compliance statement (\$10,000+)
- _____ Energy Policy and Conservation Act statement
- _____ Clean Air/Water Act statement (\$100,000+)
- _____ Civil Rights Act statement
- _____ Compliance with the Jessica Lunsford Act
- _____ Return of Discounts, Credits and Rebates to SFA statement
- _____ Record retention and record access requirements (records maintained for three years (plus the current year) from final payment of contract and/or renewal; all base solicitations must be maintained for three years after the final payment on the contract)
- _____ Method of shipment/delivery requirements
- _____ Method of payment, invoices, statements, etc.
- _____ Purchase instrument to be used and how vendor will receive purchase orders
- _____ Bid certification form
- _____ Other State or local requirements
- _____ Specifications that are sufficiently detailed to get what is needed but not so specific as to restrict competition
- _____ Product specifications (approved brand and/or equivalent)
- _____ Quantity
- _____ Quality
- _____ Packaging
- _____ Pricing (unit and extended)
- _____ Procedure for documenting/pre-approving any substitutions and/or deviations
- _____ Other local requirements

Documentation and Records:

- _____ All IFBs/RFPs/RFQs with appropriate documentation and signatures of authorized purchasers maintained on the original solicitations
- _____ Comparison charts to document procurement decisions and contract awards
- _____ Record of public bid openings and/or proposal openings if proposals will be publicly opened
- _____ Copies of contract award/non-award letters
- _____ Copies of advertisements for solicitation of good/services
- _____ Determination/document of correct procurement method used
- _____ Evaluation of escalation/de-escalation clause
- _____ Evaluation of Contract Extension/Amendment (roll-over clause)

Procurement Checklist (continued)

- _____ Evaluation/documentation of contract re-negotiations/changes to original contract at the timelines and under the same conditions specified in the original solicitation document
- _____ Evaluation of return of discounts, credits and rebates (as applicable) and detailed procedure indicating how/when the discounts, rebates and credits would be assigned to the SFA by the contractor
- _____ Evaluation of whether procurement methods/activities are consistent with the SFA's approved written procurement plan
- _____ Evaluation of procedures for ensuring records retention requirements are met and where/how all documents pertaining to the solicitation and contract/contract amendments will be maintained
- _____ Non-competitive purchases (sole source, emergency, etc.) are appropriately documented and have received approval from State agency or governing board prior to award, including purchases through means of *piggybacking* onto another SFA's solicitation document
- _____ Invoices/payments for items purchased with school nutrition funds
- _____ Documentation of any contractor performance or breach of contract from vendors
- _____ Provision requiring the SFA to abide with the Iran Divestment Act of 2015, as amended
- _____ Other local requirements

Updated to reflect Federal Regulations – March, 2019

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

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To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: [How to File a Complaint](#), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov.

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