

Posted: 6/23/2015

To: Child Nutrition Program Sponsoring Organizations

Subject: SFS-15-96 CFR 200.318 (c) (1) Procurement Standards of conduct and certification for procurement

The standards of conduct and certification for procurement specified in 2 CFR Part 200.318, the standards of conduct listed must be followed by all officers, employees, or agents of the non-Federal entity (sponsor). Regulations pertaining to this requirement are posted on the CNP website and are included with this memo. Also included in this memo is a prototype procurement standards of conduct and certification for procurement. This prototype is posted to the CNP website under the forms section.

Refer to the CNP website for further information (<http://cnp.doe.louisiana.gov>).

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**§ 200.318 General procurement standards.**

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

(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 performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must 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 must 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 un-

able 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 inter-governmental 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.

(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

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selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use time and material type contracts 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 material type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and  
(ii) 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.

**§ 200.319 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, and 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 or local 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 OF CONDUCT AND CERTIFICATION FOR PROCUREMENT

In accordance with 2 CFR Part **§200.318**, the following standards of conduct must be followed by all officers, employees, or agents of the non-Federal entity herein named, (SPONSOR) \_\_\_\_\_ that are 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 may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
- Disciplinary actions shall be applied for violations of above standards by officers, employees, or agents, up to and including termination from the program
- Officers, employees, and agents shall avoid acquisition of unnecessary or duplicative items. Consideration shall 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.
- To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, officers, employees, and agents shall make every effort 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.
- Officers, employees, and agents shall make every effort to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- Officers, employees, and agents shall make every effort 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.
- Officers, employees, and agents shall 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 **§200.212** *Suspension and debarment*)
- Officers, employees, and agents shall 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.
- Officers, employees, and agents shall 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:*

*(i) The actual cost of materials; and*

*(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. (See §200.319(J2) for further detail)*

- Officers, employees, and agents of \_\_\_\_\_(Sponsor), shall do the following:
  - Accept full responsibility, 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.
  - Make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition, including procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, in accordance with §200.324

*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.*

PROCUREMENT STANDARDS OF CONDUCT CERTIFICATION STATEMENT

I, \_\_\_\_\_ (Authorized Representative) for \_\_\_\_\_ (Sponsor)  
hereby certifies the following:

- Officers, employees, and agents shall conduct all procurement transactions in a manner providing full and open competition consistent with the standards of **§200.319**, (inclusive of written procedures for procurement transactions that:
  - Ensure clear and accurate description of technical requirements for the material, product, or service to be procured
  - Identify all requirements which must be fulfilled by offerors and all factors to be used in the evaluation of bids and proposals
  - Ensure that all 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
  - Ensure that potential bidders are not precluded from qualifying during the solicitation period

- Officers, employees, and agents shall conduct all procurement transaction, using one of the methods of procurement noted in **§200.320** (*micro-purchases, small purchase, sealed bids, competitive proposals, non-competitive proposals\**)

***\*See §200.320(f) for listing of criteria that must be established in order to utilize non-competitive proposals***

- Officers, employees, and agents shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, in accordance with **§200.321**.
- Officers, employees, and agents shall comply with the procurement of recovered materials, as specified in **§200.322**.
- Officers, employees, and agents shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications, in accordance with **§200.323**.
- Officers, employees, and agents shall ensure that the bonding requirements are followed, in accordance with **§200.325**
- Officers, employees, and agents shall ensure that the all contracts contain the applicable provisions described in Appendix II to Part 200, in accordance with **§200.326**
- Officers, employees, and agents shall comply with the retention requirements for records, in accordance with **§200.333**
- Officers, employees, and agents shall provide access to records, in accordance with **§200.336**
- Officers, employees, and agents shall adhere to the Cost Principles contained in Subpart E **§200.403 - §200.475**

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date