Food Service Procurement Policy with Sample Clauses – For Private Non-Profit Organizations

The proposed items below are requirements associated with the Food Service Program that is supported with Federal USDA funds. Please review any existing procurement policies with your Business Office to verify that any Food Service policy does not conflict. Federal rules will always take precedence over state or local rules when costs are paid in whole or in part with federal funds. However, the most restrictive policies will always be applied.

The following information and policy are in reference to State and Federal requirements following 2 CFR Part 200.318 General Procurement Standards and applicable USDA Child Nutrition Program regulation and policies.

**A Private Non Profit operating a USDA Child Nutrition Program (or any other federally funded program) needs to have a policy that defines what the small purchase threshold is**. Items purchased below that threshold are an informal (small) procurement while items purchased above that threshold will need a bid and a contract (formal purchase). This should be in line with any existing organization policy.

**Private Non Profits can follow the Federal Rule of $150,000.00. Therefore, any purchase less than $150,000.00 can be considered a small purchase if this guideline is adopted. Only purchases that exceed the $150,000.00 threshold would need a formal bid process and a contract. That purchase would then be a formal purchase.**

If the above purchases threshold is adopted, any purchase less than $150,000.00 would be a small purchase that would not require a formal bid process, however, the small purchase shall be made on a competitive basis. Unless it meets the Federal definition for a Micro-Purchase

* Any purchase below $3,000.00 is considered a **micro-purchase**. Micro-purchases may be awarded without soliciting competitive quotes if the price is considered reasonable. To the extent feasible, however, a SFA must distribute micro-purchases equitably among qualified suppliers.

Therefore, for very small Private Non-Profit organizations most Food Service purchases would be considered a micro-purchase and no quotes are necessary.

**The policy also needs to outline the following federal rules for Contracts. Therefore, even if most purchases are micro or small these provisions must still be in place.**

If contracts are awarded, however, contracts cannot be awarded to potential vendors that wrote, any of the bid specifications, the solicitation documents, or the Contract language. Potential bidders may provide information for the specifications but cannot prepare documents

Identical bid specifications or request for proposals must be provided to all potential vendors. This must include all important information such as delivery schedules, quantities, product specifications, and purchase conditions.

No Geographic Preferences (advantage based on location) is allowed with federal funds; unless purchases are part of a Farm to Plate purchase or initiative.

The SFA will adhere to “Buy American” for the food service program. Therefore Food Service is required to purchase, to the maximum extent possible, domestic products for use in meals served in our Child Nutrition Program. However, Exceptions are allowed when:

* + Food preferences can only be met with foreign goods
  + Insufficient quantity and/or quality is available in the USA
  + Domestic cost is **significantly** higher

The SFA will verify that all food program contracts and procurements are net of all applicable discounts, rebates, and credits. All contractors will maintain records and source documents in support of all costs, discounts, rebates, and credits.

**Debarment and Suspension**: All food service contracts to be paid with Federal assistance expected to equal or exceed $25,000.00, the SFA must have verification regarding debarment, suspension, ineligibility, and voluntary exclusion.

To meet this requirement a SFA can: (Your SFA needs to define which choice they will always go with)

* + Include a suspension/debarment statement within the text of the signed contract.
  + Use the state-approved certification form
  + Check the federal Excluded Parties List System <https://www.sam.gov/portal/public/SAM/>

The SFA must maintain a written code of “standards of conduct” governing the performance of their employees engaged in award and administration of contracts supported by Federal funds. Therefore, within this policy the standards of conduct must include that there will not be employees engaged in any procurement when there is a conflict of interest, real or perceived, and employees cannot solicit or accept any gratuities, favors or anything of monetary value from prospective vendors.

Please make sure that written **protest procedures** are also included. These procedures must be in place to handle and resolve disputes to include contractual and administrative issues arising out of procurements

In this policy, the SFA shall also include the **contract administration system** which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

The SFA will retain all Food Program records for three years after final payments and/or three years after any pending matters have been closed and completed.

*Below are samples only and other language can be used, adjusted, or utilized.* ***This is a template.*** *Please feel free to make changes, additions or add any other necessary items to meet the needs or your SFA. Delete all language that is unnecessary or explanatory.* ***This document includes sample clauses, please delete samples not utilized***

**Procurement Policy for Wyoming Private Non-Profit SFA WSCC**

WSCC will adhere to the following policy requirements for any procurement related to food service:

**Purchases:**

* Purchases greater than $150,000.00:
* If the amount exceeds one hundred fifty thousand dollars ($150,000.00) this is considered a **formal purchase**, and contract must be awarded through a formal bid process and a call for bids shall be published at least once in a newspaper of general circulation in the SFA, as well as published in a newspaper generally circulated state-wide and posted on the SFA’s website. The call for bids may also be published in a regional newspaper. No contract shall be divided for the purpose of avoiding this paragraph.
* Purchases less than $150,000.00:
  + Any less than one hundred fifty thousand dollars ($150,000.00) is considered a **small purchase** and does not require a bid process, however, the small purchase shall be made on a competitive basis.
* Purchases less than $3,000.00:
  + Any purchase below three thousand dollars ($3,000.00) is considered a **micro-purchase**. Micro-purchases may be awarded without soliciting competitive quotes if the price is considered reasonable. To the extent feasible, however, SFA#1 must distribute micro-purchases equitably among qualified suppliers

**Geographic Preference:**

No Geographic Preference (advantage based on location) is allowed with federal funds except for documented Farm to School (Farm to Plate) efforts. Therefore, as part of Farm to School WSCC may choose to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products only.

**Buy American:**

WSCC will adhere to “Buy American” for the food service program. Therefore Food Service is required to purchase, to the maximum extent possible, domestic products for use in meals served in our Child Nutrition Program. However, Exceptions are allowed when:

* + Food preferences can only be met with foreign goods
  + Insufficient quantity and/or quality is available in the USA
  + Domestic cost is **significantly** higher

**Records Retention:**

The SFA will retain all food program records for three years after final payments and/or three years after any pending matters have been closed and completed.

**Below are MSCC requirements and policy for all formal purchases.**

**Bid Specifications:**

WSCC contracts will not be awarded to any potential vendors who write any of the bid specifications, the solicitation documents, or any of the contract language.

Identical bid specifications and/or request for proposals will be provided to all potential vendors.

**Debarment and Suspension:**

*There are three options. ONLY one option is required and the SFA should choose which option best meets their needs and delete the other two. Sample options are below.*

All food service contracts to be paid with Federal assistance expected to equal or exceed $25,000.00. WSCC will obtain verification regarding debarment, suspension, ineligibility, and voluntary exclusion.

* Sample 1: To meet this requirement WSCC will include a suspension and debarment statement within the text of all contracts.
* Sample 2: To meet this requirement WSCC will use the state-approved Debarment and Suspension Certification Form to be included as an attachment to all contracts and bid documents.
* Sample 3: To meet this requirement WSCC shall check the Federal Excluded Parties List System at the site below and document that the vendor has not been debarred or suspended. Verification will occur prior to a vendor being chosen and before a contract has been offered. <https://www.sam.gov/portal/public/SAM/>

**Standard of Conduct for WSCC Employees:**

WSCC maintains the following code of conduct for any employees engaged in award and administration of contracts supported by Federal Funds:

* No WSCC employees will engage in any procurement when there is a conflict of interest, real or perceived, and WSCC employees cannot solicit or accept any gratuities, favors or anything of monetary value from prospective vendors
* No WSCC employee shall participate in the selection, award or administration of a contract when any of the following persons have a financial interest in the firm selected for award:
  + The employee
  + Any member of his/her immediate family
  + People with whom there is an affectionate personal relationship
  + An organization which employs or is about to employ any of the above
* WSCC would like all employees to behave with the utmost integrity and never be self-serving, be fair in all aspects of the procurement process, be alert to conflicts of interest, and avoid any compromising situations.
* Employees found to be in violation of this policy are subject to disciplinary action. Based on the severity of the infraction, the penalties could include a written reprimand to their personnel file, a suspension with or without pay, or termination.

**Contract Administration:**

WSCC will maintain a contract administration system which will ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. WSCC Business Manager will review all aspects of any contractor bid documents, expenditures, processes, and procedural aspects to ensure compliance with all federal, state, and school SFA regulations.

**Discounts, Rebates, Credits:**

WSCC will verify that all food program contracts and procurements are net of all applicable discounts, rebates, and credits. All contractors will maintain records and source documents in support of all costs, discounts, rebates, and credits.

**Bid Protest Procedures:**

Sample 1. Any bidder, person, or entity may file a bid protest with WSCC. The protest shall specify the reasons and facts upon which the protest is based and shall be filed, in writing, to the WSCC Business Office no later than 3 business days after the date of the Bid award or notice of unsuccessful bid.

WSCC will investigate the basis for the Bid protest and analyze all facts. WSCC will notify the Bidder whose Bid is the subject of the Bid protest of evidence found as a result of the investigation, and afford the Bidder an opportunity to rebut such evidence, and permit the Bidder to present any evidence that the bid and/or contract award was done in an unfair or biased manner. If necessary WSCC will then hold an informal hearing by the Board of Directors which will include the business office. WSCC will issue a written decision within 15 business days following receipt of the Bid protest, unless factors beyond WSCC reasonable control prevent such a resolution, in which event such decision will be issued as expeditiously as circumstances reasonably permit.

The decision will state the reasons for the action taken by WSCC. A copy of this decision will be furnished to the protestor and any other parties affected.

Sample 2: Any vendor who desires to protest the award of a bid pursuant to this policy shall, within fifteen (15) days after award of the bid, give notice of their protest. The notice shall state in detail the basis of the claimant’s bid protest and the resolution requested. The bid protest shall be provided to the Food Service Director or other person designated by the Board of Directors to handle bid protests pursuant to the food service procurement policy. The Food Service Director or other person so designated shall investigate the claim and issue a written decision within fifteen (15) days after receipt. If the claimant is not satisfied with the decision of the Food Service Director, the claimant may appeal the decision to the board of directors of the SFA. The notice of appeal shall be filed with the board of directors at the business office within fifteen (15) days after issuance of the decision being appealed from. The appeal shall state the basis of the appeal and provide to the board the original bid protest, together with a copy of the decision being appealed from. The specific grounds for the appeal shall be stated in the appeal and shall not include additional claims or information not provided with the original bid protest.

The board of directors at the next regular board meeting following the receipt of the appeal shall either hear the appeal or set a time to consider the appeal. The board may in its discretion render a decision based upon the information and records before the board of directors or, in the board’s discretion, may request the claimant and a representative of the SFA to each present information pertaining to the bid protest. In the event the board chooses to hear from the bid protester and a representative of the SFA, each will be entitled to present or have someone on their behalf present their position to the board.

Thereafter, the board shall render its decision either at that meeting or at the next regular board meeting.