

NEW MILLENNIUM SECONDARY SCHOOL

PROCUREMENT PROCEDURES

Procurement Procedures General Information

Procurement is a multistep process for acquiring the best possible goods and services at the lowest possible price. The **New Millennium Secondary School (NMSS)** will purchase goods and services for use in the School Nutrition Programs in compliance with Title 2, *Code of Federal Regulations (2 CFR)*, sections 200.318–200.326; Title 7, *Code of Federal Regulations (7 CFR)*, parts 210 and 220; and all applicable state and local rules.

When making procurement decisions, the NMSS will follow the following four fundamental principles of procurement:

1. Comply with the Buy American Provision by purchasing, to the maximum extent possible, agricultural commodities and products grown and processed in the United States.
2. Understand and comply with federal, state, and local requirements.
3. Ensure that full and open competition exists to the maximum extent possible as outlined in 2 *CFR*, Section 200.319(a).
4. Award contracts to responsible and responsive bidders.

Methods of Procurement (only refer to applicable procurement methods)

1. Micropurchase Method (2 *CFR*, Section 200.320[a])

Micropurchases may be awarded without soliciting competitive quotations or comparing prices among qualified suppliers if the following two conditions are met:

- The aggregate value of a single transaction is \$10,000 or less, effective August 1, 2018.
- NMSS staff considers the price to be reasonable. Documentation (e.g., receipts and invoices) must be maintained for three years plus the current program year or until the next California Department of Education (CDE) review, to document costs that are reasonable.

The NMSS will distribute micropurchases equitably among qualified suppliers to the extent practical. The NMSS will ensure that purchases are made at a variety of stores. The NMSS will not limit its purchases to only one store unless it is not

practical to equitably distribute (e.g., due to the distance of another store from the district office).

Micropurchases are not intended to be used to avoid a small, informal or formal procurement.

2. Small Purchase Method (2 *CFR*, Section 200.320[b])

The small purchase method is used to procure goods and services when the aggregate value of the purchase is equal to or less than the small purchase threshold adhered to by the NMSS. The NMSS does not have a local small purchase threshold; therefore, the NMSS is required to adhere to the federal small purchase threshold of \$250,000, effective August 1, 2018. The NMSS will check the Federal Acquisition Regulation (FAR), Part 2, on the FAR web page at <https://www.acquisition.gov/?q=browsefar> annually on January 1 to verify the federal small purchase threshold.

The NMSS will follow the following steps when conducting procurements using the small purchase method:

- **Step 1:** The NMSS Food Service Manager will develop and provide a clear and accurate description of the technical requirements of the goods or services to be procured from potential sources per 2 *CFR*, Section 200.319(c)(1), including the requirement to comply with the Buy American Provision per 7 *CFR*, sections 210.21(d) and 220.16(d) when procuring food. The same specifications will be provided to each potential vendor so that each vendor can provide price quotes on the same goods or services.
- **Step 2:** Price or rate quotations will be obtained from a minimum of two responsible and responsive sources. Price quotes must be documented in writing per NMSS' policy.

NMSS Small Purchase Quotation forms and other forms of written quotes submitted by potential vendors will be retained by the NMSS Food Service Manager with other related procurement documentation (e.g., invoices) for the term of the contract plus extensions and three additional school years, or until the next review by the CDE, whichever is longer.

- **Step 3:** The NMSS Food Service Manager will evaluate the written quotes received based on stated evaluation criteria in order to determine responsiveness.
- **Step 4:** The NMSS Food Service Manager will evaluate the written responses and references received based on stated evaluation criteria to determine responsibility.

- **Step 5:** The NMSS Food Service Manager will award small purchases to the lowest priced responsible and responsive vendor.
- **Step 6:** The NMSS Food Service Manager will monitor the contract to ensure goods or services solicited for are the ones received and all deliverables are met per 2 *CFR*, Section 200.318(b).

The NMSS will check for any changes to the micropurchase and small purchase thresholds approved by the federal awarding agency, the U.S. Department of Agriculture (USDA).

3. Formal Purchase Methods (2 *CFR*, Section 200.320[c][d])

The formal purchase method, used to procure goods and services when the estimated purchase price is above the federal small purchase threshold, is currently set at above \$250,000 effective August 1, 2018. Both Invitation for Bid (IFB) and Request for Proposal (RFP) methods are used by the NMSS. The NMSS Food Service Manager will check the FAR, Part 2, web page at <https://www.acquisition.gov/?q=browsefar> annually on January 1 to verify the federal small purchase threshold.

The terms of formal contracts will be one year, with the option to renew for up to 4 one-year terms. Renewal options will be mutually agreed between NMSS and the awarded contractor.

The NMSS will complete the following steps when conducting formal procurements:

- **Step 1:** The NMSS Food Service Manager will describe how it performs a **cost or price analysis (2 *CFR*, Section 200.323)** for every procurement in excess of the federal small purchase threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the NMSS Food Service Manager will make independent estimates before receiving bids or proposals to ensure the bids or proposals received are reasonable.
- **Step 2:** The NMSS Food Service Manager will develop a written solicitation, which will incorporate:
 - A clear and accurate description of the technical requirements for the goods or services to be procured per 2 *CFR*, sections 200.319(c)(1) and 200.320(c)(d).
 - The requirement to comply with the Buy American Provision per 7 *CFR*, sections 210.21(d) and 220.16(d)

- All requirements that the offerors must fulfill and all other factors (IFBs and RFPs) and their relative importance (RFPs only) used in evaluating bids or proposals per 2 *CFR*, sections 200.319(c)(2) and 200.320(c)(d) to judge responsive and responsible firms
- Instructions for responding vendors
- The general terms and conditions of the contract
- **Step 3:** The NMSS purchasing manager will advertise the solicitation in print and on websites 30 days prior to the deadline for submission of bids and proposals.
- **Step 4:** The NMSS FSD and purchasing manager will open bids resulting from IFBs at the time and place prescribed in the solicitation. RFPs will be opened according to NMSS' determination.

The NMSS Food Service Manager and purchasing manager will evaluate offers from responding firms by using the evaluation criteria outlined in the solicitation for both IFBs and RFPs. If there is not a minimum of two respondents, the NMSS Food Service Manager and purchasing manager will review the solicitation to ensure that it is not limiting competition as outlined in 2 *CFR*, Section 200.319, and consider expanding advertising efforts before reissuing the solicitation or accepting the single bid.

The offers will be ranked based on cost only for IFBs and on evaluation criteria (i.e., technical criteria) and cost for RFPs for all responsible and responsive responders. NMSS Food Service Manager and purchasing manager must describe their written method used to conduct a technical evaluation of all proposals received, as required by 2 *CFR*, Section 200.320(d)(1) for RFPs only. The NMSS purchasing manager will negotiate the technical aspects of each RFP prior to negotiating the cost aspect of the RFP. Any or all bids may be rejected if there is sound documented reason.

- **Step 5: Responsible and Responsive Contractors (2 *CFR*, Section 200.318[h])**

The NMSS will award contracts only to responsive and responsible contractors possessing the ability to conform to all of the SFA's stated terms and conditions and 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. NMSS defines responsive as respondent conforms to all of NMSS' stated terms and conditions and defines responsible as respondent is capable of performing successfully under the terms and conditions of the contract.

- **Step 6:** The NMSS Food Service Manager will award the contract to the responsible and responsive bidder who offers the lowest price for IFBs. All IFBs will result in a firm, fixed-price contract.

For RFPs, the NMSS Food Service Manager will award the contract to the responsible and responsive respondent whose proposal is most advantageous to the NMSS, with price and other factors considered. All RFPs will result in either a fixed-price or cost reimbursable contract. **Cost plus a percentage of cost contracts will never be used.**

- **Step 7:** The NMSS Food Service Manager will monitor the contract per 2 *CFR*, Section 200.318[b] by:
 - Overseeing deliveries to ensure that the goods solicited for were received
 - Periodic on-site visits to ensure services solicited are being satisfactorily performed
 - Reviewing the contract's terms, conditions, and deliverables monthly to ensure that they are being met and done so in accordance with all federal, state, and local rules
 - Ensuring that discounts, rebates, and credits in cost reimbursable contracts are provided

4. Noncompetitive Procurement Method (2 *CFR*, Section 200.320[f])

The NMSS will only enter into a noncompetitive agreement when one or more of the following circumstances apply:

- The item is available only from a single source.
- An emergency exists, and the urgency for the requirement will not permit a delay resulting from competitive solicitation.
- The NMSS received prior approval from the CDE after submitting a written request to the CDE with justification for conducting a noncompetitive procurement.
- After solicitation from a number of sources, competition is determined inadequate.

Purchasing Cooperatives and Intergovernmental Procurement (2 CFR, Section 200.318[e])

The NMSS may choose to make purchases through a cooperative agreement with a group of other schools to increase purchasing power or the NMSS may piggyback on contracts awarded to a vendor from another school district when all procurement principles are followed.

While intergovernmental agreements can benefit the NMSS, the NMSS may only enter into an intergovernmental agreement with a local government (e.g., school district). NMSS may also join or piggyback onto a cooperative when that agreement was procured and awarded consistent with federal and state procurement regulations.

The NMSS purchasing manager and local counsel will carefully review the solicitation issued by a cooperative. The NMSS purchasing manager and local counsel will ensure the procurement of the contract, and the contract itself, complies with applicable federal, state, and local procurement rules. The NMSS purchasing manager and local counsel will confirm that the addition of their purchasing power to the procurement does not create a material change in scope or in services.

For cooperative purchasing, the NMSS purchasing manager must maintain a copy of the solicitation and contract, proof of advertising, and bid award documents (e.g., evaluation documentation) from the lead entity on file for the term of the contract, plus any extensions, and three additional school years.

For piggybacking, the NMSS purchasing manager must obtain prior written permission from the lead entity awarding the bid and the vendor who was awarded the bid. A copy of the solicitation and contract, including the piggyback clause, proof of advertising, and bid award documents (e.g., evaluation documentation) must be retained for the term of the contract plus extensions and three additional school years.

A copy of all documents listed above will be made available during a procurement review.

Buy American Provision (7 CFR, sections 210.21[d] and 220.16[d]; U.S. Department of Agriculture Policy Memorandum SP 38-2017)

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 Public Law 105-336 added a provision, Section 12(n), to the National School Lunch Act (NSLA) (42 *United States Code* Section 1760[n]), that requires all school food authorities (SFA) to purchase, to the maximum extent practical, domestic commodities or products. Section 12(n) of the NSLA defines a domestic commodity or product as an agricultural commodity (i.e., meat/meat alternate [M/MA], grain, fruit, vegetable, and fluid milk) or processed product (i.e., processed food product that includes components that contribute to a reimbursable meal, such as a chicken patty that contains an M/MA and grain component) that is processed in the United States using substantial agricultural commodities that are produced in the United States. Substantial means that

over 51 percent of the final processed product consists of agricultural commodities that are grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States.

When funds are used from the nonprofit school food service account, SFAs must ensure that procurement transactions for food products comply with the Buy American Provision requirement in 7 *CFR*, sections 210.21(d) and 220.16(d), whether food products are purchased by SFAs or entities that are purchasing on their behalf.

Note: The SFA is not required to adhere to the domestic requirement for foods that are not creditable food components.

In compliance with this policy, the NMSS Food Service Manager will ensure that the solicitation and contract language include the requirement for domestic agricultural commodities and products and retain records documenting any exceptions in advance of accepting deliveries. Implementation of the Buy American Provision by NMSS Food Service Manager will be ensured by:

- Including the Buy American Provision requirement in food bid specifications, IFBs, RFPs, contracts, purchase orders, and other procurement documents issued
- Monitoring the contract to ensure that the domestic products solicited are the ones received
- Requiring suppliers to provide certification of domestic origin for all food products, from bids and proposals through receipts and invoices
- Conducting monthly reviews on storage facilities to ensure the domestic products received are the ones solicited for and awarded

Exceptions to the Buy American Provision will be used as a last resort and are only allowable for one of the two exceptions listed below and outlined in further detail in the USDA Policy Memorandum SP 38-2017: Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program.

- The product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.
- Competitive bids reveal the costs of a United States product are significantly higher than the nondomestic product as determined by [ABCSD over _____ percent higher].

Note: Ingredients used to flavor, enhance, or prepare products (e.g., oil, yeast, spices, condiments, salad dressing) must also comply with the Buy American Provision requirement **only if** the first ingredient (or second after water) is one of the five components (breads/grains, fruits, vegetables, M/MA, and fluid milk) that contribute to a

reimbursable meal. If the first ingredient in these products is not one of the five components that contribute to a reimbursable meal, the product does not have to comply with the Buy American Provision requirement. For example, catsup with tomato paste as the first ingredient must comply with the Buy American Provision requirement since tomato paste is creditable as a red/orange vegetable, **even though catsup is not a creditable item**. Mustard with distilled white vinegar as the first ingredient does not need to comply with the Buy American Provision requirement since vinegar is not a component that contributes to a reimbursable meal. Additionally, nonagricultural products such as paper, water, packaging, and labor do not need to comply with the Buy American Provision requirement.

The NMSS Food Service Manager or vendor must document exceptions to the Buy American Provision requirement prior to accepting each and every nondomestic agricultural commodity or product. This documentation must be on file for at least the current year plus three years, and must be made available during an on-site administrative review and an off-site procurement review.

The documented exception will include the following:

- A description of the nondomestic item
- Alternative domestic commodities or products that the NMSS Food Service Manager considered or the vendor offered and the reason they were not substituted for the nondomestic item
- A synopsis of what third-party verification (e.g., USDA Agricultural Marketing Service Run a Custom Report web page at <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>) was done by the vendor or the NMSS Food Service Manager to determine cost and availability
- Documentation by the vendor or the NMSS Food Service Manager outlining the price of both domestic and nondomestic commodities or products or lack of availability to justify the exception
- The dates that the: (1) vendor informed the NMSS Food Service Manager of the nondomestic commodity or product, (2) NMSS Food Service Manager agreed to accept this food item in advance of delivery, and (3) commodity or product was received by the NMSS

Small and Minority Businesses, Women's Business Enterprises (2 CFR, Section 200.321)

The [ABCS] purchasing manager will ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible by taking the following affirmative steps:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists
2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
5. Using the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Minority Business Development of the Department of Commerce
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section

Duplication of Goods or Services (2 CFR, Section 200.318[d])

The NMSS will avoid the acquisition of unnecessary or duplicative items by determining whether the goods or services are necessary and ensuring that their purchase does not duplicate items or bids that the NMSS already has in place. The NMSS Food Service Manager will provide the NMSS purchasing manager with documentation justifying that the purchase of all goods and services requested are required and not duplicative prior to conducting a procurement.

Competition (2 CFR, Section 200.319[a][1-5, 7])

The NMSS will conduct all procurement transactions in a manner providing full and open competition. Situations where competition is limited will be avoided by the NMSS. Some of these situations include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Organizational conflicts of interest

- Specifying only a brand name product instead of allowing an equivalent product to be offered
- Any arbitrary action in the procurement process

When a procurement has been properly conducted, and there is only one respondent, NMSS will evaluate the scope of work or services requested to determine whether they were too restrictive by contacting potential respondents who did not participate, and by reviewing the requested services for possible modification. NMSS will then resolicit. If, after the second solicitation, there is only one respondent, NMSS will move forward with that award.

Brand Name or Equivalent (2 CFR, Section 200.319[a][6])

When using a brand name or product code in the specification, the NMSS will adhere to the following procedures:

- The NMSS Food Service Manager will ensure that the description in the specification will always include a clause that an equivalent product is acceptable.
- A copy of the specified brand or code will be posted on the NMSS website by the purchasing manager so vendors can verify that the product they are bidding on is actually an equal.
- Vendors bidding an item as an equal product to the brand name specified will be required to provide the NMSS Food Service Manager with a product specification sheet and a sample case of the product for taste testing and verification by all NMSS **nutrition department staff and a selected number of students** to ensure that the product is an equal product to the brand name specified.

Contractor Involvement (2 CFR, Section 200.319[a])

The NMSS will ensure objective contractor performance and eliminate unfair competitive advantage by excluding contractors that develop or draft specifications, requirements, statements of work, and IFBs and RFPs from competing for such procurements. The NMSS Food Service Manager will maintain documentation to prove that the appropriate procurement procedures were used and that the final selection is the most efficient and economical for the NMSS.

Clear and Accurate Description of Technical Requirements Required (2 CFR, Section 200.319[c][1–2])

The NMSS will have written procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description

of the technical requirements for the material, product, or service being procured and will not contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service being procured and minimum essential characteristics and standards. A **brand name** or **equivalent** description may be used as a means to define the performance or other salient requirements of procurement. The specific desired features of the named brand must be clearly stated, along with all requirements which the offerors must fulfill, and all other factors to be used in evaluating bids or proposals.

Bid Protest (2 CFR, Section 200.318[k])

The NMSS is 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 NMSS of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

All solicitations over the Simplified Acquisition Threshold must include bid protest language. The NMSS accepts a prospective bidder's protest to a bid award if the protesting party believes the award is not in compliance with the law, does not follow bid procedures, or does not meet bid specifications. A protest must be filed with the NMSS designated point of contact for that bid. Such protests must be made in writing and received by the NMSS Business Services Office within five working days of bid award date and shall include all documents supporting or justifying the protest. The protesting party must mail or deliver copies of the protest to the NMSS Business Services Office. A bidder's failure to file the protest documents in a timely manner shall constitute a waiver of their right to protest the award of the contract.

Maintenance of Records (2 CFR, Section 200.318[i])

The NMSS will maintain records sufficient to detail the history of the 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, a copy of the solicitation and contract, the basis for the contract price (the bidding history), rationale and approval for noncompetitive procurements, any contract amendments, billing and payment records, and a history of contractor claims and for the full term of the contract plus extensions and three additional school years, or until the next review by the CDE. The CDE and USDA reviewers shall have full access to and the right to examine all procurement documentation occurring during this time period.

Contract Management (2 CFR, Section 200.318[b])

The NMSS must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

NMSS will perform the following tasks to ensure compliance: Audit invoices monthly before payment is issues.

Certifications (including, but not limited to 2 CFR, Appendix II)

The NMSS will require any successful respondent to provide proof of having and maintaining, during the life of any contract with the NMSS, Public Liability and Property Damage Insurance to protect themselves and the NMSS from all claims for personal injury, including accidental death, as well as from all claims for property damage arising from the operations any contract that the NMSS enters into.

The NMSS will not enter into a contract with any company or individual that has been debarred or suspended. The NMSS will require that vendors and potential vendors certify their compliance with the Lunsford Act, which prohibits anyone required to register as a sex offender under Article 27A of Chapter 4 of the General Statutes from knowingly being on the premises of any school.

Vendors that are awarded contracts are required to submit a completed Debarment and Suspension Certificate, and Disclosure of Lobbying Activities. These forms must be completed prior to commencement of work.

Continuing Education/Training Standards (7 CFR, sections 210.30[b][3],[c][1-5], [d][1-6], [e][1-2])

The NMSS operates the School Nutrition Programs (SNP) and must ensure that all SNP directors (7 CFR, Section 210.30[b][3]), SNP managers (7 CFR, Section 210.30[c][1-5]), and staff (7 CFR, Section 210.30[d][1-6]) with responsibility for SNP, complete their required annual trainings. The annual training should include, but is not limited to, the following topics as applicable: training in procurement procedures, and any other specific topics identified by USDA Food and Nutrition Service as needed to address program integrity or other critical issues. Annual training requirements for SNP managers, directors, and staff are summarized under 7 CFR, Section 210.30[e][1-2].

Contact Information

For questions and concerns regarding procurement solicitations, contract evaluations, and awards, please contact the following NMSS staff:

Purchasing Manager: Jonas Hammond
Food Service Director: Nichole Sims

This institution is an equal opportunity provider.