

# Procurement: Doing it Right!

2016 California School Nutrition Association Conference  
State Day—November 10, 2016



# 2015-16 Accomplishments

- Trainings
- Local agency procurement review
- Web page
- Resources





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# Housekeeping

- Folders
- Index cards\*
- Pre/post assessment\*



\*Collect at end of day

# Training Objectives

- Become familiar with the principles of procuring goods and services
- Identify applicable federal and state rules
- Recognize components to include in a code of conduct
- Understand Procurement Standards
- Hear about real-world best practices





# Why Focus On Procurement?



# Procurement Oversight



- 2013 – Office of Inspector General audit
- 2014 – USDA begins development of Local Agency Procurement Tool
- 2015 – USDA procurement trainings for state agencies





# Procurement Oversight

- 2015 – Policy Memo on procurement reviews
- 2016 – Procurement Tool Pilot
- 2016 – Draft Tool for use in SY 2016-17
- 2016 – Buy American Oversight



# Procurement Basics

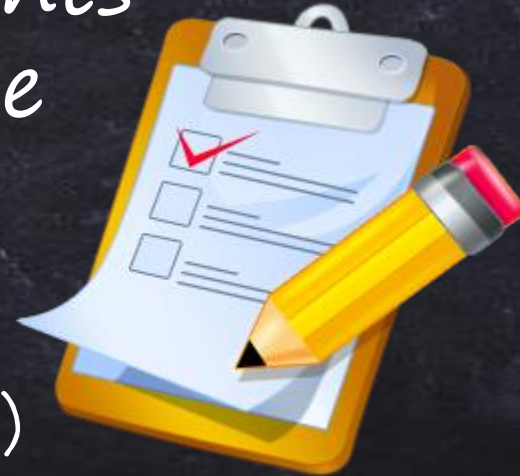




# Written Procurement Procedures

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

2 Code of Federal Regulations (CFR), Section 200.318 (a)





# Importance of Procurement Procedures

- Ensures purchases made are in compliance with federal, state, and local rules
- Provides purchasing staff with step-by-step guide on proper procurements = decrease in unallowable transactions

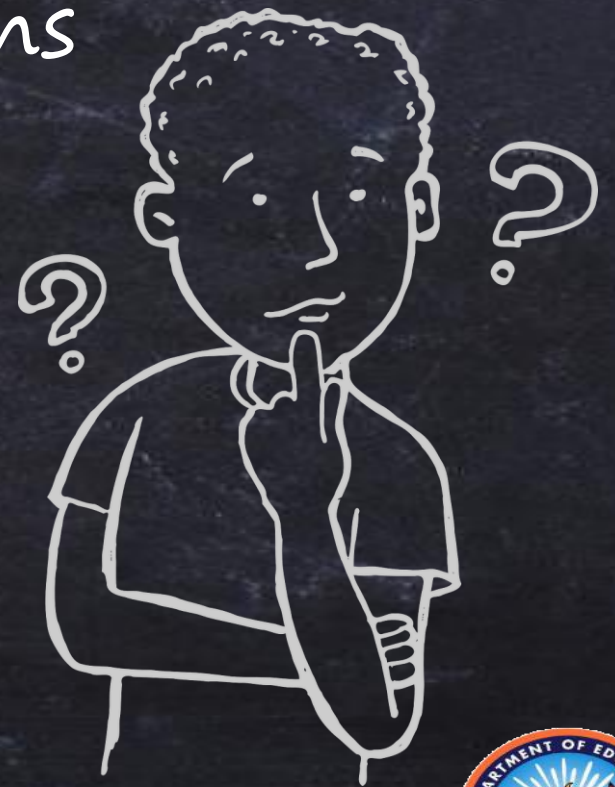
**IMPORTANT**





# Understanding Procurement Procedures

- Document containing specific information and processes for procurement transactions
- Update as procedures change
- Unique to each district
- Documented
- Follow the procedures



# Writing Procedures Activity

Standard:  
Purchasing Groceries

Written Procedures:

1. Check procedures you follow when purchasing groceries on the front
2. Put the steps you follow in order on the back
3. Share with group





# *Written Code of Conduct*



# Written Code of Conduct

- “The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.”

2 CFR Section 200.318 (c)(1)



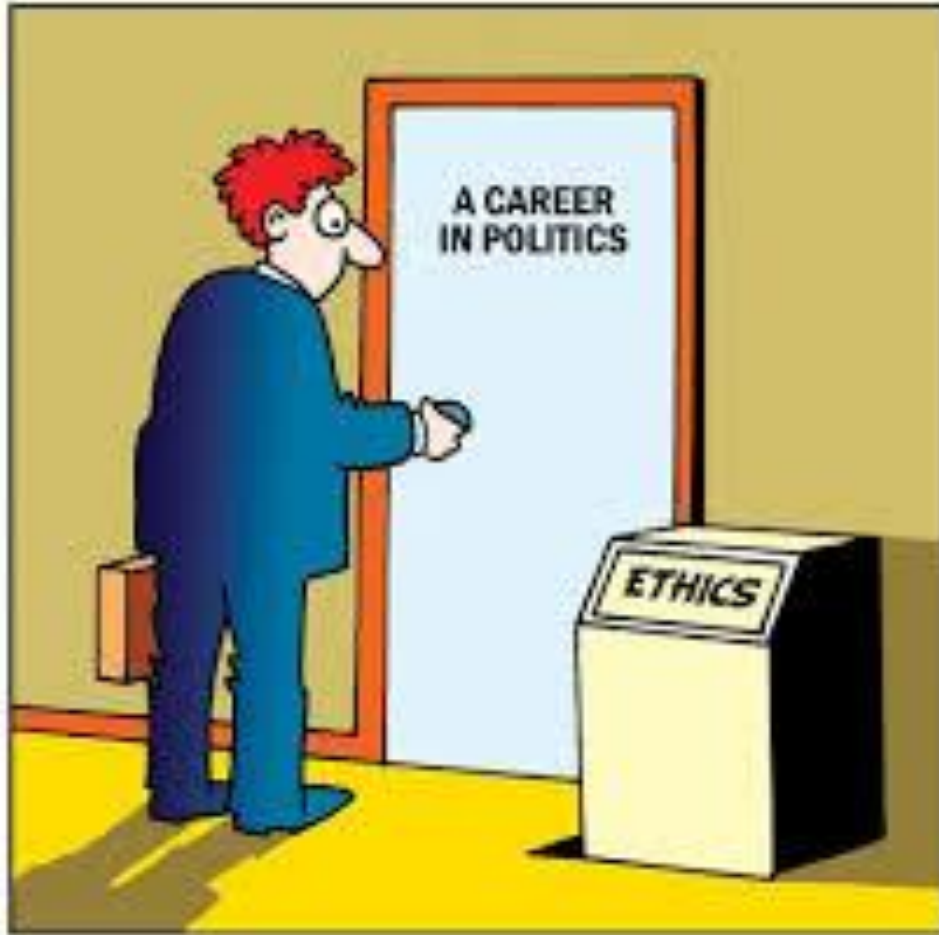


# Importance of Written Code of Conduct

- Protects employees from engaging in unethical and unallowable behavior
- Provides for disciplinary actions to be applied for violations
- Protects district's reputation



# Code of Conduct Applies to...



- All employees, officers, or agents engaged in the selection, award and administration of contracts



# Conflict of Interest

- A “conflict of interest would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or any organization which employs or is about to employ any of the parties indicated, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.”

2 CFR, Section 200.318 (c)(1)  
CDE MB CNP-01-2015





*"Try this—I just bought a hundred shares."*





# Disciplinary Actions

“The standards of conduct must provide for disciplinary actions to be applied for violations of such standards”

2 CFR, Section 200.318(c)(1)

Examples of disciplinary actions can include:

- Verbal warning or written reprimand
- Fines
- Suspension or termination





# Soliciting Gifts is Prohibited

“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 of subcontracts.”

2 CFR, Section 200.318(c)(1)





# Gratuities, Favors or Gifts

“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.”

2 CFR, Section 200.318 (c)(1)

\*Always consult your local counsel



# Organizational Conflicts of Interest

- “If the SFA has a parent, affiliate, or subsidiary organization...:
  - The non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest.
  - This rule does not apply to local government agencies or Indian Tribes
- 2 CFR Section 200.318 (c)(2)





# What is an Organization Conflict of Interest?

- Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization''



# Conflict of Interest 1

Bob Jones is the Food Service Director (FSD) for Serenity Now School District. He awarded a one year milk contract to Moo Milk Company. Bob's brother is the CEO of Moo Milk Company.





# Real Conflict of Interest

- Bob's brother (immediate family) will benefit financially from the procurement



# Conflict of Interest 2

- Tiffany Jones is the purchasing manager for Happy Town Unified School District.

Her district has a code of conduct that allows employees to accept up to \$25 of unsolicited gifts from one source each calendar year.

- Paul Smart, owner of the Frozen Food Funtopia Company, a contractor for the district, sends her a box of candy (worth \$24) and baseball game tickets (worth \$200)

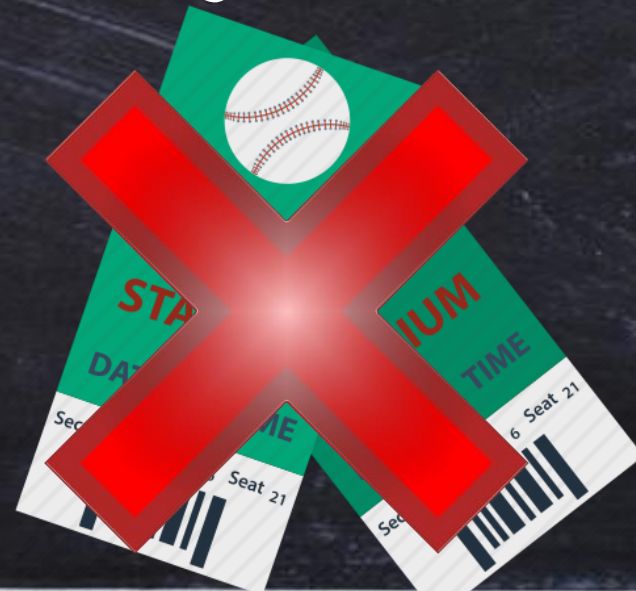
Can she accept any of these gifts?





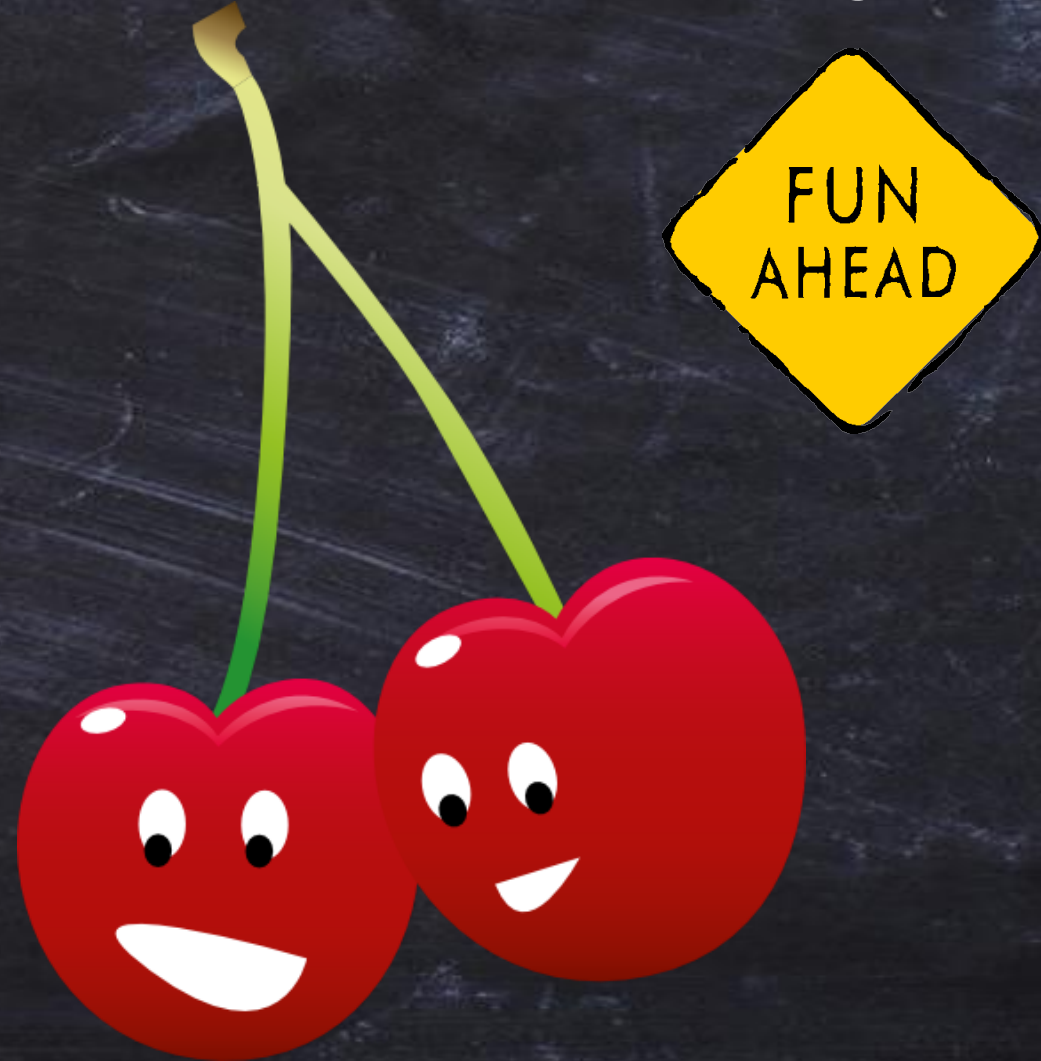
# Real Conflict of Interest

- Can accept candy since it falls below the nominal value set for gifts and gratuities
- Cannot accept baseball game tickets because it exceeds the nominal value set for gifts and gratuities.



# Conflict of Interest Activity

- Match the written code of conduct statement to the federal regulation





# California State Law Governing Conflicts Of Interest

# California Law



- THE POLITICAL REFORM ACT (PRA)  
Government Code Section 87100 Et. Seq.
- Government Code Section 1090





# Fair Political Practices Commission



- In California, the Fair Political Practices Commission (FPPC) is the agency primarily charged with the responsibility of advising, informing the public, and enforcing the PRA



# Political Reform Act

Government Code Section 87100, et seq.

- “Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them”





# Political Reform Act

Government Code Section 87100, et seq.

- “Assets and income of public officials which may be materially affected by their official actions...[are] disclosed and in appropriate circumstances the officials . . . [are] disqualified from acting in order that conflicts of interest may be avoided”



# Public Official

- The Political Reform Act applies to “public officials”, which not only encompasses only elected and appointed officials, but also any “member, officer, employee or consultant of a state or local governmental agency.”





# Compliance Under the PRA

1. Identify and avoid participating in, making or attempting to influence decisions where there is a personal, material, or financial conflict of interest.
2. Seek advice from counsel, and make sure your SFA adopts and have an approved Conflict of Interest Code that complies with the PRA.
3. Public Officials generally, file Statements of Economic Interest (FPFC Form 700)



# Government Code Section 1090

Government Code Section 1090 provides:

- (a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.





# Government Code Section 1090

Government Code Section 1090 provides:

- (b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).



# Government Code 1090

- Government Code Section 1090 prohibits public officials from being financially interested in a contract or sale in both his or her public and private capacities. Section 1090 provides that an officer or employee may not make a contract in which he or she is financially interested. Any participation by an officer or an employee in the process by which such contract is developed, negotiated, and executed would be a violation of Section 1090.





# Next Steps

Does my agency have written procurement procedures and a written code of conduct?

- If no, get started!
- CDE will be asking about these documents during your procurement review!



# Remember...



- Train staff on the written procurement procedures and the written code of conduct
- Get approval by the governing board, if applicable





# Procurement Standards



# Duplication of Goods/Services

- “The non-Federal entity’s procedures must avoid acquisition of unnecessary or duplicative items.”



2 CFR, Section 200.318 (d)

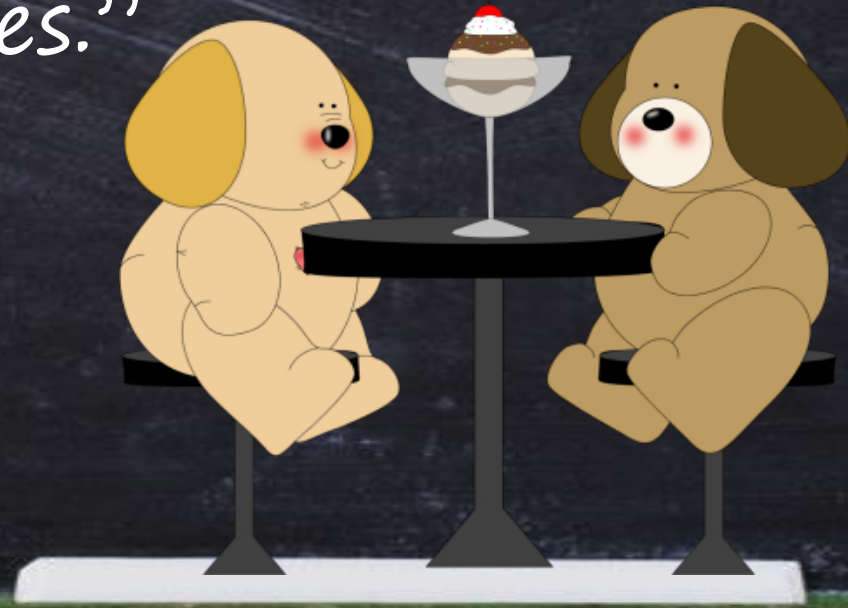




# Common or Shared Goods and Services

- “The non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.”

2 CFR, Section 200.318 (e)



# Surplus Property

- “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”



*2 CFR, Section 200.318 (f)*





# Responsible

- “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.”

2 CFR, Section 200.318 (h)



# Records

- “The non-Federal entity must maintain records sufficient to detail the history of procurement.”
  - Including (but not limited to):
    - Rationale for procurement method
    - Selection of contract type
    - Contractor selection or rejection
    - Basis for the contract price

2 CFR, Section 200.318 (i)

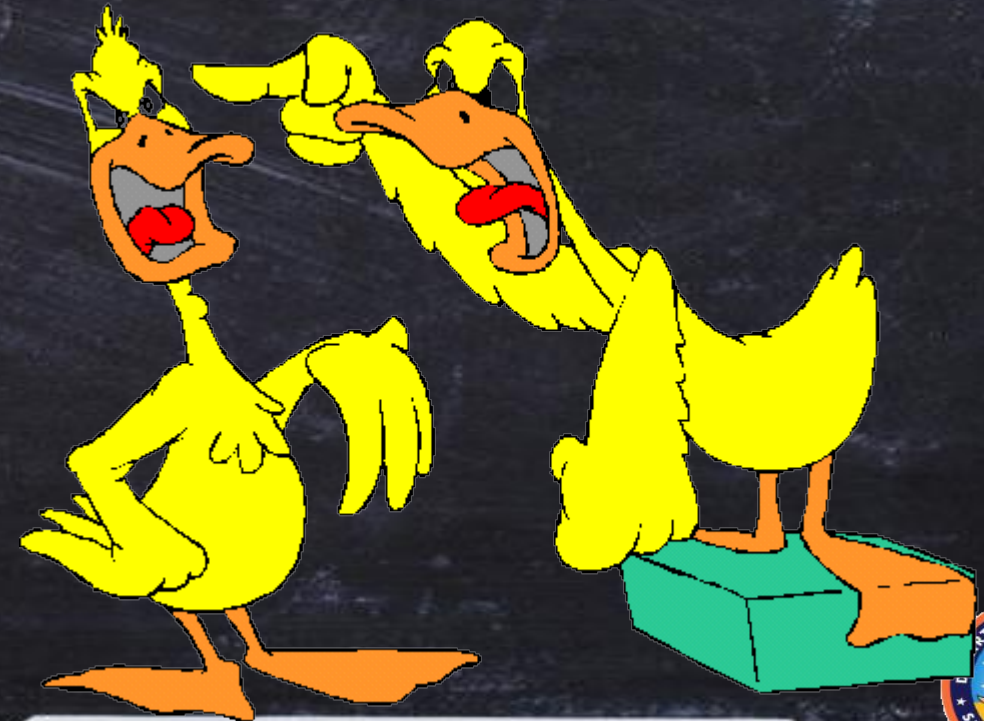




# Contractual and Administrative Issues

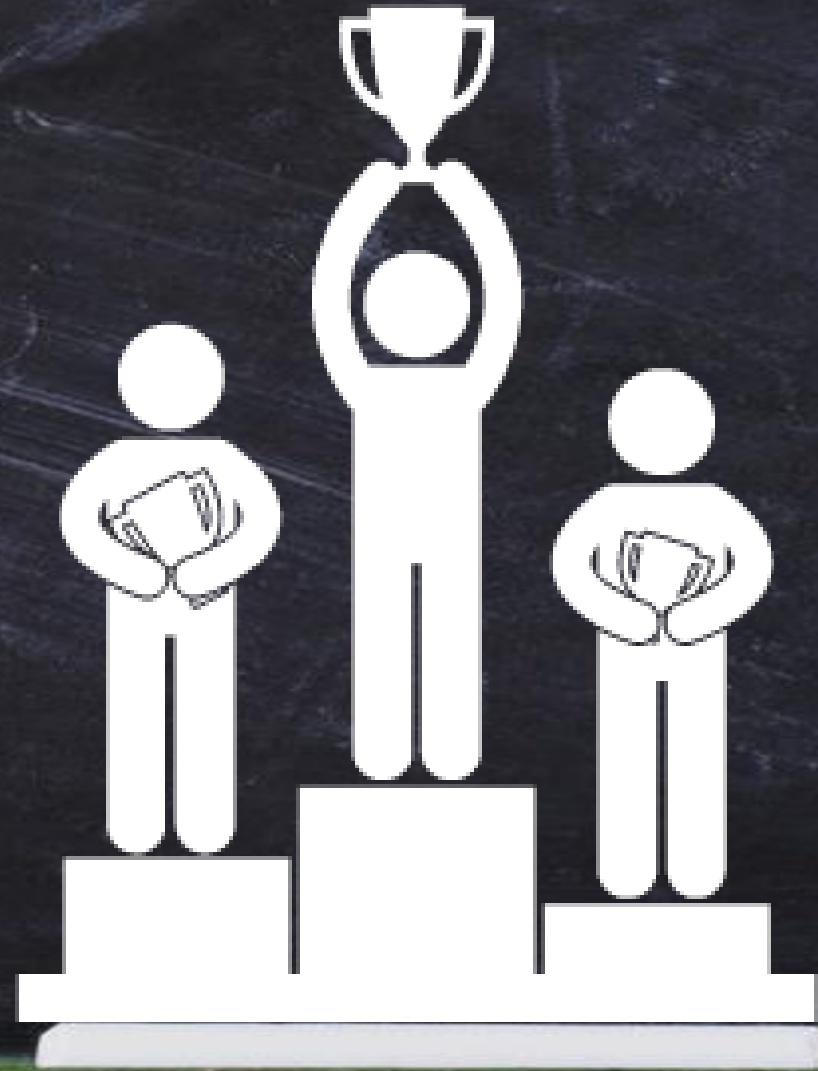
- “The non-Federal entity **alone must be responsible**, for the settlement of all contractual and administrative issues arising out of procurements.”
  - Including (but not limited to):
    - Source evaluation
    - Protests
    - Disputes
    - Claims

2 CFR, Section 200.318 (k)



# Competition

- “All procurement transactions must be conducted in a manner providing full and open competition”





# Contractor Involvement

Contractors *must be excluded* from competing for a procurement if they develop or draft:

- Specifications
- Requirements
- Statements of work
- IFBs or RFPs



2 CFR, Section 200.319(a)



# Restricting Competition

- “Some of the situations considered to be restrictive of competition include but are not limited to:
  - Placing unreasonable requirements on firms in order for them to qualify to do business
  - Requiring unnecessary experience of excessing bonding
  - Noncompetitive pricing practices between firms
  - Noncompetitive contracts to consultants
  - Organizational conflicts of interest

2 CFR, Section 200.319 (a)(1-5)





# Brand Name or Equivalent

- “Specifying only a “brand name” product instead of allowing “an equal” product to be offered”





# Cost and Price Analysis

- For all contracts over the small purchase threshold, SFAs must perform a cost or price analysis to obtain independent estimate of price **before** receiving bids or proposals.

2 CFR, Section 200.323 (a)





# Buy American Provision



# Buy American Provision

The National School Lunch Act requires SFAs to purchase to the maximum extent possible domestic commodity or product that is produced in the United States (U.S.)

and a food product that is processed in the U.S. using substantial agricultural commodities that are produced in the U.S.





# Definitions

- **Domestic products:** produced and processed in the U.S. substantially using agricultural commodities that are produced in the U.S.
- **Substantial:** Over 51 percent of the final processed product consists of agricultural commodities produced in the U.S.



# Exceptions to Buy American

- Product not produced or manufactured in the U.S. in sufficient and reasonable quantities of satisfactory quality
- Competitive bids reveal the cost of the U.S. product are significantly higher than nondomestic products.





# Compliance Tips

- Include steps to ensure compliance
- Include Buy American clause in:
  - Specifications
  - Solicitations
  - Purchase orders
  - Other procurement documents



# Compliance Tips

Monitor contractor performance to ensure compliance

- Require supplier to certify origin of product
- Examine product packaging to identify country of origin
- Ask supplier for specific information about the percentage of U.S. content in food product





# On-site Administrative Review (AR)

- Visual inspection of agricultural commodity labels in on-site and off-site storage facilities
- Four categories:
  - Dry
  - Canned
  - Refrigerated
  - Frozen



Made in  
America

By an American Owned Corporation



# Procurement Reviews

School Years 2016–17 and 2017–18





# 2016-17 Procurement Review



- Off-site review
  - Assess whether school food authority (SFA) has the two required written procurement documents
- On-site review
  - Assess whether SFA adhering to Buy American Provision by physical inspection of off and on-site storage



# USDA Local Agency Procurement Review Tool

- Procurement Review Tool – Excel Spreadsheet (under consideration)
- More information for SY 2017-18 Procurement Reviews will be forthcoming

**USDA** United States Department of Agriculture  
**Food and Nutrition Service**





**BREAK TIME!**









# Procurement Methods



# *Invitation For Bids*

## *Competitive Sealed Bids*





# Invitation For Bids

## Competitive Sealed Bids

Invitations for Bids (IFB) is a method where bids are publicly solicited, and a fixed price contract is awarded to a bidder who:

- Conforms to all the material terms and conditions of the bid,
- Is qualified to perform the work under consideration in the IFB, and
- Is the lowest in price



# When To Use An IFB

- An IFB is used when there is no substantive difference among the products or services that meet specifications so that the only difference among the responsive bids is price.
- SFAs may use an IFB to obtain services when the service is simple, common, or routine.





# IFB Requirements

- Detailed, adequate, realistic, and complete specifications
- Terms and conditions the bidders must meet in order to be responsive and responsible
- Two or more responsible bidders are willing to compete
- Firm fixed price contract
- Selection made based on price



ACTIVITY





# How to Conduct an IFB



## 1. Advertising

- IFB is publicly advertised
- Public Contracts Code Section 20112 – state law requires a school district to publish a notice calling for bids **at least once a week for two weeks in a newspaper of general circulation in the district**, and if there is no such newspaper, a newspaper of general circulation in the county.
- Bids must be solicited from an adequate number of known suppliers



# How to Conduct an IFB



2. Bids are Publicly Opened
3. Award to the Lowest Responsive and Responsible Bidder

\* 2 CFR Section 200.320(c)(2)(iv) provides that “a firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.





# *Request For Proposal Competitive Proposals*



# Request for Proposal (RFP)

- Federal Regulation:  
A solicitation wherein the SFA provides specifications and requirements for goods or services being sought, and any other conditions the bidders must meet in order to be considered responsive and responsible. Contracts are awarded to a responsible bidder whose proposal is the most advantageous to the SFA, with price and other factors considered.  
2 CFR, Section 200.320 (d)
- State Law:  
“The contract shall be let to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.”  
CA Public Contract Code, Section 20111 (a)(3)





# Federal RFP Requirements

1. SFA states its need using clear and well thought-out specifications that are not overly restrictive
2. Specify the anticipated terms and conditions of the contract
3. Provide information that the respondent must include in its proposal



# Federal RFP Requirements

4. Identify each factor that the SFA will use to evaluate the proposals
5. Describe how technical and cost factors will be considered in making the final determination of which respondent (bidder) will receive the contract (i.e., the relative importance or weight, of each factor in the award of the contract)
6. State that the award will be made, on the basis of price and other factors, to the responsive and responsible firm or individual whose response is most advantageous to the purchasing agency, after price and other factors have been considered.





# State of CA RFP Requirements

PCC Section 20111 requires school districts award to the **lowest responsible bidder**.

Step 6 of the federal requirements from previous slide will be different for a school district using an RFP process.



# Publicly advertise the RFP

## State of CA (school districts)

- “A school district shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county”

CA PCC, Section 20112

## Federal

- “Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical”

2 CFR, Section 200.320 (c)(2)(i)



# When to Use RFP Negotiations

- When SFAs do not know precisely how the services sought can best be performed (i.e., FMSC services, unique technology)



# Negotiation of Technical Proposals

1. SFAs should conduct negotiations with the bidders that submitted the top ranked technical proposals.
2. SFA needs to ensure all bidders have the same opportunity to negotiate
3. At the end of the negotiation, ensure the technical proposals will fully meet the SFA's needs.





# Negotiation of Cost Proposals

- SFA will negotiate costs with bidders who have satisfied their technical needs.



# Best and Final Offer



- After all negotiations and modifications have been completed, each remaining bidder will submit a “best and final offer.”
- SFAs should seek to award the contract on the basis of best overall value.





# When to use IFBs/RFPs

- Anytime
- Required when exceeding your small purchase threshold



# Contract Monitoring

- Make sure the contractor is meeting your terms and conditions
- Include a clause for termination if contractor is not responsive or responsible

As a best practice:

- specify when termination can occur, and whether termination can be in whole or in part





# Which Method To Use?

- You attended a food show and were introduced to **new products** that you love—cauliflower crust pizzas.
- After conducting a taste test with a small group of students and staff, you decide to place an order for the pizzas with plans to order more if the students enjoy them.



# Price

- If you purchase 5,000 pizzas at \$4.00 each, which procurement method would you use?
- If you purchase 30,000 pizzas at \$4.00 each, which procurement method would you use?





Q&A







*Insert All About that Training Video*

# Small Purchases





# 2016 Small Purchases

Small purchase threshold (also known as simplified acquisition threshold):

- \$150,000\* federal threshold for all SFAs
- However, PCC 20111 sets the threshold at \$87,800\* for contracts awarded by school districts

\*May fluctuate annually



# Small Purchase Federal Requirements

- Price or rate quotations must be obtained by an adequate number of qualified sources

2 CFR, Section 200.320(b)





# Small Purchase

## State of CA Requirements

- “For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district...a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in any manner as the district deems appropriate.”

CA PCC, Section 20116



# Best Practices

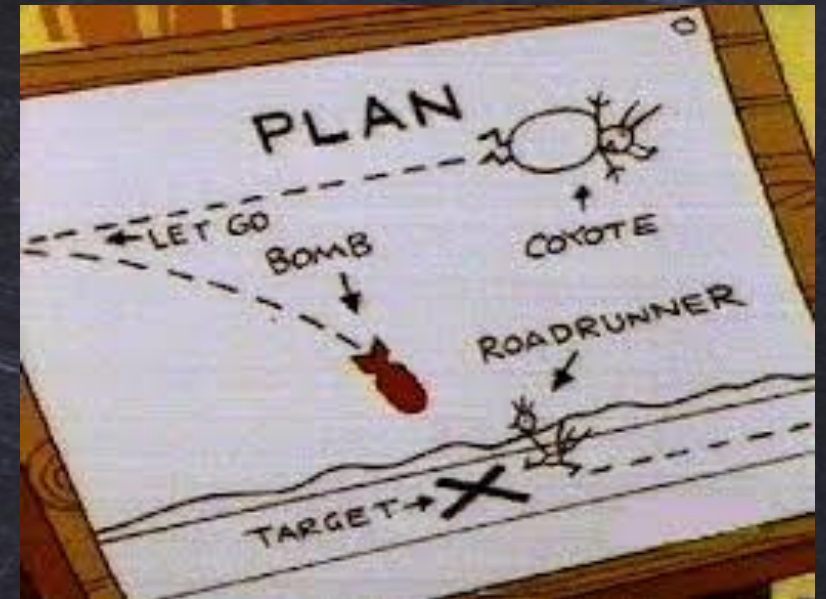
- Planning
- Drafting
- Soliciting
- Evaluating
- Awarding
- Oversight





# Planning

- Needs assessment
- Forecasting
- Budgeting
- Try to answer the following questions:
  - What goods or services do you need?
  - Are these goods or services available for purchase?
  - Will you need delivery or will you pick them up?
  - When and where do you need them?
  - How much do you need?





# Drafting Specifications

- Include a clear and accurate description of the goods or services desired (2 *CFR*, Section 200.319[c][1])
- Do not specify a “brand name”, unless you allow an “equal” to be offered (2 *CFR*, Section 200.319[a][6])
- Do not be so detailed that competition is limited





# Developing Specifications

- Name of item
- Description
- Case pack and weight
- Delivery needs
- Minimum/maximum size
- Main ingredient(s)
- Other product ingredients
- Prohibited ingredients
- Nutritional standards
- Unit/quantity needed
- Quality indicators
- Meal pattern requirements
- Child Nutrition (CN) label



# Soliciting

- Contact vendors and get quotes
  - Contact an adequate number of vendors
  - Document quotes in writing and retain the records





# Evaluating the quotes

- Ensure the bidders are responsive and responsible

**Responsive**



Can meet terms  
and conditions

**Responsible**



Can successfully  
perform



# Awarding

- Select the lowest price bid of responsive and responsible bidder
- Document and retain documentation of your decision
- Results in a fixed price contract





# Contract Oversight



- Make sure the vendor is meeting your terms and conditions
- Include a clause allowing for termination if vendor is not responsive or responsible



ACTIVITY





# Micropurchasing



# Micropurchase Criteria

- Less than or equal to **\$3,500\*** per transaction
- Price of goods and services is considered **reasonable**
- Purchases are distributed **equitably** among qualified suppliers **to the extent practicable**

2 CFR, Section 200.320 (a)

**\*Threshold subject to change with inflation**





# Micropurchase Threshold

- Set at  $\leq \$3,500$  per transaction, unless a more restrictive local threshold applies
- Do not split transactions to stay under the threshold and avoid using other procurement methods



# Table Discussion



**KEEP  
CALM  
IT'S  
ACTIVITY  
TIME!!!**

- Discuss scenarios with participants at your table
- Determine whether the procurement was done correctly





# Scenario 1

A district needs three new gas ranges for three kitchen sites. The cost for each one is approximately \$2,000. Can the district follow the micropurchase method?



# Scenario 2

A district wants to purchase \$800 of pears from a local farmer for their Harvest of the Month program even though they have a produce contract.

Can the district follow the micropurchase method?





# Reminder!

*Do not split transactions to stay under the threshold and avoid using other procurement methods!*



# Geographic Preference Option





# Why Geographic Preference Option?

- Previously Federal regulations prohibit the use of in-state or local Geographic Preference Option in evaluation of bids and proposals
- 2008 Farm to School Bill amended the Richard B. Russell National School Lunch Act (NSLA) to encourage SFAS to purchase unprocessed locally grown and locally raised agricultural products.
- FNS published guidance



# Who Defines Local?

The SFA making the purchase or the state agency making purchases on behalf of such school food authorities has the discretion to determine the local area to which the Geographic Preference Option will be applied.

The SFA must not define local in a manner that unnecessarily restricts free and open competition.





# Geographic Preference

- Grants authority to SFAs to define local
- Defines unprocessed agricultural products
- Enables SFAs to state a preference for local product, but does not require purchases be made from local sources





# What Is Unprocessed?

- Cooling, refrigerating, and freezing
- Peeling, slicing, dicing, cutting, chopping, shucking, and grinding
- Forming ground products into patties
- Drying and dehydrating
- Washing, packaging, vacuum packing, and bagging
- Adding preservatives to prevent oxidation
- Butchering livestock or poultry
- Pasteurizing milk





# What is Processed?

- Canning (including tomato sauce)
- Additives and fillers (including flavored milk)
- Heating



*Do These Foods Meet  
The Geographic  
Preference Option?*





*Dried Beans*









# Canned Beans







# Hummus







# Mixed Color Carrots









# Mixed Frozen Peas and Carrots









# Whole Apples







# Bag of Sliced Apples







# Tortillas





YEEEEAP



C|TV  
Christina Aguilera



# Raw Beef Patties



#FALLONTONIGHT





# Incorporating Geographic Preference in an RFP

- Define local and include definition in specification
- Decide how much preference local products will receive
- Establishing a minimum score that must be met before a bidder's price is evaluated
- Ensure the solicitation is clear how the preference will be applied
- Awarding the contract to the lowest responsible bidder meeting the established minimum score



# Applying Geographic Preference in an RFP

## Product Specification

- Green apples, US. Fancy or No. 1, prefer five 185 count boxes per week but willing to consider other pack sizes for Sep - Dec

Evaluation Criteria	Points Allocated	Apple Lane	Great Granny	Fred's Fujis
Experience with NSLP	30	27	20	30
Geographic Preference	10	10	0	0
Past performance (minimum of three references)	30	25	25	30
Product Availability	30	30	20	30
Total Points *Minimum of 90 to consider	100	92	65	90

\* School Districts should consult with their local counsel regarding how to apply geographic preferences.





# Applying Geographic Preference in an RFP

Award to the lowest bidder meeting minimum requirement of 90 points.

Evaluation Criteria	Apple Lane	Great Granny	Fred's Fujis
Total Points *Minimum of 90 to consider	92	65	90
Total Contract Quote	\$24,800	<del>\$18,000</del>	\$22,000
			Awarded Vendor

\* School Districts should consult with their local counsel regarding how to apply geographic preferences.











**Questions**

— and —

**Answers**



I



Procurement



# Noncompetitive Proposals and Sole Source



# State Approval Required

The FNS requires that all sole source procurements be approved prior to the award by the applicable State Agency.





# When To Use Noncompetitive Proposals

- The item is available only from a single source
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the SFA; or
- After solicitation of a number of sources, competition is determined inadequate

2 CFR Section 200.320(f)





# Maintenance of Records

These records may include, but are not limited to:

- Rationale for the method of procurement
- Contractor selection or rejection
- The basis for the contract price

2 CFR, Section 200.318(i)





# Federal Procurement for School Food Service

Barry Sakin, SNS



# Procurement Should Be

- Fair
- Open
- Competitive
- Transparent





# Responsive and Responsible

Awards to the most responsive and responsible responder

- **Responsive:** meeting the requirements of the procurement for quality and level of service
- **Responsible:** able to perform and execute the terms of the contract

Solicitations should always result in an award in the best interests of the district as custodians of Federal funds, and providing the best meals to the students



# The Federalism Principle

- Local laws, regulations, and policies must at least conform to state rules
- State laws, regulations, and policies must at least conform to federal rules





Where Does It Say That?



# 2 CFR, sections 200.317-326

## Grants and Agreements

- Subtitle A: Office of Management and Budget  
Guidance for Grants and Agreements
  - Part 200: Uniform Administrative Requirements, Cost  
Principles, and Audit Requirements for Federal Awards
    - Subparts 317-326: Procurement Standards





# Title 7, Code of Federal Regulations, Section 210.21

## Agriculture

- Subtitle B: Regulations of the U.S. Department of Agriculture
  - Chapter II: Food and Nutrition Service (FNS), USDA
    - Subchapter A: Child Nutrition Programs (CNP)
    - Subpart E: State Agency and SFA Responsibilities
      - Section 210.21: Procurement



# Couple of Key Issues...





## 2 CFR, Section 200.318

### General Procurement Standards

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



## 2 CFR, Section 200.318 General Procurement Standards

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





## 2 CFR, Section 200.318 General Procurement Standards

- c) The nonfederal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts.



# Methods of Procurement





# Title 2, CFR, Section 200.320

## Methods of Procurement

- Micropurchases
- Small purchase procedures
- Sealed Bids (IFB/ITB)
- Competitive Proposals (RFP)
- Noncompetitive Proposals (sole source)



# Group Purchasing

Sandra Foss, Program Analyst, FNS





# Piggybacking



# Piggybacking And California Law for School Districts

- PCC Section 20118

Notwithstanding Sections 20111 and 20112, the governing board of any school district, without advertising for bids, if the board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases from a vendor.





# Requirements under PCC Section 20118

- The governing board of the school district needs to determine it to be in the best interests of the district to piggyback.
- After this determination, the board may authorize the public corporation or agency, by contract, lease requisition or purchase order to make a purchase on its behalf.
- The public agency who is making the purchase for the school district must all laws which authorizes it to make the leases or purchases. (For example, the school district needs to ensure that the public agency it is piggybacking from followed all competitive bidding requirements)



# Requirements Under PCC Section 20118

- The school district may include purchases or leases that were included in the awarding agency's advertisement for bid.
- PCC Section 20111 does not authorize districts to "piggyback" on other public agency's service contracts.
- Payment can be made to the other public agency (with the existing contract) or directly to the vendor.





# Requirements Under PCC Section 20118

- It should be noted that the California Attorney General has opined that piggybacking cannot be used to factory built modular building component for installation on a permanent foundation.
- School Districts should consult with legal counsel prior to “piggybacking” to ensure compliance with California law.





# How Districts May Purchase Pursuant to PCC Section 20118

- The district should obtain all bid documents from the awarding public agency, not the vendor, and review the awarding public agency's bid carefully.
- The public agency's bid document's should include specific terms and conditions which gave notice to potential bidders that other agencies may purchase/lease identical items at the same prices and upon the same terms and conditions.
- The award of contract (i.e., agenda and minutes from the board of another district) to ensure the award was made by the public agency.
- Ensure the public agency in making the award followed federal, state, and local laws on the procurement (i.e., that the award was made to the lowest responsible and responsive bidder).
- A copy of the contract executed by the awarding agency and the contractor.
- Verification that the public agency actually purchased/leased from the Contractor
- Approval by the awarding public agency of any extensions of the contract





# PROCUREMENT PROCEDURES AND CODE OF CONDUCT : JUST ONE MORE THING!

Lynette Rock, RD, SNS



# It's Easy – Just Follow the Four Step Process!

- Understand
- Borrow
- Adapt
- Review or modify





# Code of Conduct

- **Understand** why you need it
- **Borrow** from those who already have one, or the one the district already has
- **Adapt** it to your district or food services
- **Review** it yearly and **modify** it as needed



# Written Procurement Procedures

- **Understand** why I need it
- **Borrow** from others
- **Adapt** it to your district
- **Review** it yearly and **modify** it as needed





# What to Include in Procedures\*

- Type of procurement methods used for each type of item
- How does the district ensure compliance with each procurement method?
  - Micropurchases, small, and formal purchases
- Procurement steps, timelines, and evaluation criteria

*\*Not an inclusive list*





EASY ST.



# *Procurement Best Practices: A Guide for the School Food service Operation*

*Daryl Hickey  
Director of Food and Nutrition Services  
Pomona Unified School District*



# Introduction

- RFP versus IFB
- Treat RFP like a formal bid
- Make it transparent
- If it is not written down, it does not exist
- Be thorough in bid packet





# Best Practices Steps

- Advertise—two weeks
- Pre-opening meeting - **voluntary for vendor**
  1. Review expectations
  2. Original signatures
  3. Original documents, no copies
  4. Review timelines
  5. Questions must be submitted in writing by due date
  6. After deadline no more questions
  7. Discuss score card
  8. Courier deliveries



# Best Practice Steps

- Closure deadline strictly monitored
- Choose a clock to use to close out packets
- Samples to one location, packets to another
  - Samples to be reviewed by another than the packet opener





# Best Practice Steps

- Score card completed by multiple participants
  - Score card not revealed to vendors
- Multiple participants eliminates favoritism
- Failure to follow pre-bid instructions results in a no-bid



# Best Practices

- Cover Page of what to return
- Bid bond or deposit
- Piggyback clause—school site attached
- Cover page reviewing courier delays
- Covering items not on bid





# Best Practices

- Ability to cancel within 30 days notice
- Bid protest procedures (required in regulations)
- Samples
- Delivery times, location, map, and addresses



Questions?





# Professional Standards Crediting Information

Key Area: Operations (2000)

Key Topic: Purchasing (2400)

Learning Objectives:

Product Specifications (2410)

Bid Solicitation and Evaluation (2420)

Purchase Food, Supplies, and Equipment (2430)

Co-op Groups and Geographic Preference (2450)

Total Instructional Hours: 7.0



# Thank you!

Questions: [SFSContracts@CDE.ca.gov](mailto:SFSContracts@CDE.ca.gov)

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