

Policy

PROCUREMENT PROCEDURES FOR CHILD NUTRITION PROGRAMS

The Franklin Township Board of Education intends for this Policy to identify their procurement plan for the United States Department of Agriculture’s (USDA) School Nutrition Programs. The District may or may not participate in any or all of these programs and they include, but are not limited to:

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- Afterschool Snack Program (ASP)
- Special Milk Program (SMP)
- Fresh Fruit and Vegetable Program (FFVP)
- Seamless Summer Option (SSO) of the NSLP
- Summer Food Service Program (SFSP)
- At-Risk Afterschool Meals component of the Child and Adult Care Food Program (CACFP)
- Schools/Child Nutrition USDA Foods Program

The Board of Education is ultimately responsible for ensuring all procurement procedures for any purchases by the Board of Education and/or the Food Service Management Company (FSMC) comply with all Federal regulations; State procurement statutes and administrative codes and regulations; local Board of Education procurement policies; and any other applicable State and local laws. The FSMC’s billing invoices should comply with all regulations and requirements as outlined in the approved FSMC Contract.

The Franklin Township Board of Education intentionally seeks to prohibit conflicts of interest in all procurement of goods and services. All procurements must maximize full and open competition. The school business administrator will ensure that source documentation shall be available to determine open competition, the reasonableness, the allow ability and the allocation of costs.

A. General Procurement

The procurement procedures will maximize full and open competition, transparency in transactions, comparability, and documentation of all procurement activities. The district plan for procuring items for use in the school nutrition programs is as follows:

1. If the amount of purchases is more than the \$40,000.00, formal procurement procedures will be used as required by 2 CFR 200.318-326 and any local procurement code and regulations. Informal procurement procedures (small purchase) will be required for purchases under the most restrictive small purchase threshold.
2. The following procedures will be used for all purchases:

Product/Services	Procurement Method	Evaluation	Contract Award Type	Contract Duration/Frequency
Small Purchases \$3,501 - \$39,999	3 quotations using SFA Internal Procurement Procedures	Most responsive quote, that distributes equitably amongst suppliers.	Fixed price.	Not to exceed 3 years.
Purchases \$40,000 or more	Bid, Invitation for Bid (IFB) or Request for Proposal (RFP)	Lowest Bid or most responsive proposal.	Sealed Bid or Proposal.	Not to exceed 3 years or 5 years for FSMC.

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3. Formal bid procedures will be applied on the basis of (*check all that apply*):

- Centralized system
- Individual school
- Multi-school system
- State contract

Because of the potential for purchasing more than public or non-public informal/small purchase threshold amount, or the district approved threshold if less, it will be the responsibility of the school business administrator to document the amounts to be purchased so the correct method of procurement will be followed.

B. Formal Procurement

When a formal procurement method is required, the following competitive sealed bid or an Invitation for Bid (IFB) or competitive proposal in the form of a Request for Proposal (RFP) procedures will apply:

1. An announcement of an IFB or a RFP will be placed on the district website and the approved newspapers. The business administrator may also use other media outlets including internet to publicize the intent of the School District to purchase needed items. The advertisement for bids/proposals or legal notice will be run for 10 days.
2. An advertisement is required for all purchases over the district's small purchase threshold of \$3,500.00. The announcement (advertisement or legal notice) will contain the:
 - a) General description of items to be purchased;
 - b) Deadline for submission of questions and the date written responses will be provided, including addenda to bid specifications, terms, and conditions as needed;
 - c) Date of pre-bid meeting, if provided, and if attendance is a requirement for bid award;
 - d) Deadline for submission of sealed bids or proposals; and
 - e) Address of location where complete specifications and bid forms may be obtained.
3. In an IFB or RFP, each vendor will be given an opportunity to bid on the same specifications.
4. The developer of written specifications or descriptions for procurements will be prohibited from submitting bids or proposals for such products or services.
5. The IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the procurement document:
 - a) Contract period;
 - b) A statement that Morris County Vocational School District is responsible for all contracts awarded;
 - c) Date, time, and location of IFB/RFP opening;
 - d) How vendor is to be informed of bid acceptance or rejection;
 - e) Delivery schedule;
 - f) Requirements (terms and conditions) that bidder must fulfill in order for bid to be evaluated;
 - g) Benefits to which the district will be entitled if the contractor cannot or will not perform as required;
 - h) Statement assuring positive efforts will be made to involve minority and small business;
 - i) Statement regarding the return of purchase incentives, discounts, rebates, and credits to the district's nonprofit school food service account;
 - j) Contract provisions as required in [Appendix II to 2 CFR 200](#);
 - k) Contract provisions as required in [7 CFR 210.21\(f\)](#) for all cost reimbursable contracts;
 - l) Contract provisions as required in [7 CFR 210.16\(a\)\(1-10\)](#) and [7 CFR 250.53](#) for food service management company contracts;

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- m) Procuring instrument to be used are purchase orders from firm fixed prices after formal bidding;
 - n) Price adjustment clause (tied to a standard index, i.e., consumer price index, or other as stated in terms and conditions for pricing and price adjustments);
 - o) Method of evaluation and type of contract to be awarded (solicitations using an IFB are awarded to the lowest responsive and responsible bidder; solicitations using a RFP are awarded to the most advantageous bidder/offer or with price as the primary factor among factors considered);
 - p) Method of award announcement and effective date (if intent to award is required by state or local procurement requirements);
 - q) Specific bid protest procedures including contact information of person and address and the date by which a written protest must be received;
 - r) Provision requiring access by duly authorized representatives of the district, New Jersey Department of Agriculture, United State Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts;
 - s) Method of shipment or delivery upon contract award;
 - t) Provision requiring contractor to maintain all required records for three years after final payment and all other pending matters (audits) are closed for all negotiated contracts
 - u) Description of process for enabling vendors to receive or pick up orders upon contract award;
 - v) Provision requiring the contractor to recognize mandatory standards/policies related to energy efficiency contained in the [Energy Policy and Conservation Act \(PL 94-163\)](#);
 - w) Signed statement of non-collusion;
 - x) Signed [Debarment/Suspension Certificate](#), clause in the contract or a copy of search results from the [System for Award Management \(SAM\)](#);
 - y) Provision requiring "Buy American" as outlined in [7 CFR Part 210.21\(d\)](#) and [SP 242016](#); and
 - z) Specifications and estimated quantities of products and services prepared by the district and provided to potential contractors desiring to submit bids/proposals for the products or services requested.
6. If any potential vendor is in doubt as to the true meaning of specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the school business administrator or his or her designee and will specify the deadline for all questions.
- a) The school business administrator or his or her designee will be responsible for securing all bids or proposals;
 - b) The school business administrator or his or her designee will be responsible to ensure all district procurements are conducted in compliance with applicable federal, state, and local procurement regulations;
 - c) The following criteria will be used in awarding contracts as a result of bids/proposals. Price must be the highest weighted criteria:
 - i. Price;
 - ii. Quality of products and produce;
 - iii. Evidence of proven and exemplary service and delivery; and
 - iv. Availability.
7. In awarding a RFP, a set of award criteria in the form of a weighted evaluation sheet will be provided to each bidder in the initial bid document materials. Price alone is not the sole basis for award, but remains the primary consideration among all factors when awarding a contract. Following evaluation and negotiations, a firm fixed price or cost reimbursable contract shall be awarded:
- a) The contracts will be awarded to the responsible bidder/proposer whose bid or proposal is responsive to the invitation and is most advantageous to the district, price as the primary and

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- other factors considered. Any and all bids or proposals may be rejected in accordance with the law;
- b) The school business administrator is required to sign on the bid tabulation of competitive sealed bids or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections;
 - c) The school business administrator shall review the procurement system to ensure compliance with applicable laws;
 - d) The school business administrator or his or her designee shall be responsible for documentation the actual product specified is received;
 - e) Any time an accepted item is not available, the school business administrator or his or her designee will select the acceptable alternate. The contractor must inform the school business administrator or his or her designee within seven business days if a product is available. In the event a nondomestic agricultural product is to be provided to the district, the contractor must obtain, in advance, written approval for the product. The school business administrator must comply with the Buy American Provision;
 - f) The school business administrator shall ensure that full documentation regarding the reason an accepted item was unavailable, and the procedure used in determining acceptable alternates, will be available for audit and review;
 - g) The school business administrator responsible for maintaining all procurement documentation.

C. Small Purchase Procedures

If the amount of purchases for items is less than the district's small purchase threshold, the following small purchase procedures including quotes will be used. Quotes from an adequate number of qualified sources will be required.

1. Written specifications will be prepared and provided to the vendor.
2. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of two vendors shall be contacted.
3. The school business administrator or his or her designee will be responsible for contacting potential vendors when price quotes are needed.
4. The price quotes will receive appropriate confidentiality before award.
5. School business administrator upon the approval of the board will award quotes. Quotes will be awarded to the lowest and best quote based upon price, quality, service, delivery, availability, and other criteria as detailed in the ISP or RFP.
6. The school business administrator or his or her designee will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications.
7. The school business administrator or his or her designee will be responsible for documentation that the actual product specified is received.
8. Any time an accepted item is not available, the school business administrator or his or her designee will select the acceptable alternate. Full documentation will be made available as to the selection of the acceptable item.
9. Bids will be awarded on the following criteria. Price must be the highest weighted criteria. Examples of other possible criteria include quality, service, delivery, and availability.
 - a) Price;
 - b) Quality of products and produce;
 - c) Evidence of proven and exemplary service and delivery; and
 - d) Availability.
10. The school business administrator shall be required to sign all quote tabulations, signifying a review and approval of the selections.

D. Noncompetitive Proposal Procedures

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If items are available **only** from a single source when the award of a contract is not feasible under small purchase, sealed bid or competitive negotiation, noncompetitive proposal procedures will be used:

1. Written specifications will be prepared and provided to the vendor.
2. The school business administrator or his or her designee will be responsible for the documentation of records to fully explain the decision to use the noncompetitive proposal. The records will be available for audit and review.
3. The school business administrator or his or her designee will be responsible for documentation that the actual product or service specified was received.
4. The school business administrator or his or her designee will be responsible for reviewing the procedures to be certain all requirements for using single source or noncompetitive proposals are met.
5. Noncompetitive proposals shall be used for one-time purchases of a new food item to determine food acceptance by students and provide samples for testing purposes. The school business administrator shall maintain a record of noncompetitive negotiation purchases. At a minimum, the record of noncompetitive purchases shall include:
 - a) Item name;
 - b) Dollar amount;
 - c) Vendor; and
 - d) Reason for noncompetitive procurement.
6. The board of education or governing board will approve, in advance, all procurements that result from noncompetitive negotiations according to board policy 3320 Purchasing Procedures and the district's standard operating procedures for business (SOP).

E. Bid Protests

1. Any vendor intending to submit a proposal in response to an advertised RFP, and finding cause to challenge a specification contained within the RFP, may submit a written protest to the business administrator, setting forth, in detail, the grounds for such protest.
2. The written protest shall be submitted to the business administrator only after the District has formally responded to questions posed during the RFP-established question and answer period and in sufficient time to permit a review of the merits of the protest and to take appropriate action as may be necessary, prior to the scheduled deadline for proposal submission.
3. In order to provide sufficient time for full assessment of the issue(s) of the challenge and, if merited, to effect changes to the RFP and public notice of such changes, the business administrator may disregard any protest of specifications filed fewer than seven business days prior to the scheduled deadline for proposal submission.
4. The business administrator shall, upon receipt of a timely protest of a specification contained in an advertised RFP, issue a final written decision on the protest prior to the public opening and reading of proposals received in response to that RFP.
5. The business administrator may resolve a protest of a specification by amending the RFP and extending the deadline for proposal submission, by canceling the procurement, or by any other appropriate means.
 - a. The Business administrator has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Business administrator. The Business administrator has the discretion to limit attendance at an in-person presentation to those bidders likely to be affected by the outcome of the protest.
 - b. The Business administrator, or the Business administrator's designee, may perform a review of the written record or conduct an in-person presentation. The determination of such designee shall be in the form of a report to the Business administrator, which shall be advisory in nature and not binding on the Business administrator. All parties shall receive a copy of the report and shall have 10 business days to provide written comments or

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exceptions to the Business administrator. Subsequent to the 10-business-day period for comments/exceptions, the Business administrator shall make a final written decision on the matter.

F. Miscellaneous Provisions

New product evaluation procedures will include (e.g., evaluation of product labels, student taste-tests):

1. The school business administrator shall review each transaction.
2. Payment will be made to the vendor when the contract has been met and verified and has met the standards established according to board policy 3320 Purchasing Procedures and the district's standard operating procedures for business (SOP). (If prompt payment is made, discounts, etc., may be accepted.)
3. Specifications will be updated as need.
4. If product is not as specified, the following procedure will take place (e.g., remove product from service, contact vendor for approved alternate product, remove product from bid).

G. Emergency or Pressing Need Purchases

If it is necessary to make a one-time emergency procurement to continue service or obtain goods, the purchase must be authorized using a purchase order signed by the school business administrator. The following emergency procedures shall apply:

1. The school business administrator shall approve all emergency procurements.
2. At a minimum, the following emergency procurement procedures shall be documented:
 - a) Item name;
 - b) Dollar amount;
 - c) Vendor; and
 - d) Reason for emergency.
3. If it is necessary, in the course of a pressing need, to make an emergency purchase by means of "piggybacking" on the bid of another district, the following conditions must exist and approved procedures must be followed and appropriately documented as follows:
 - a) The school business administrator originating the competitive procurement must have a "piggyback provision" in the original solicitation;
 - b) Documentation of the emergency requiring the piggybacking must be maintained;
 - c) Approval from the board will be obtained and documented;
 - d) Approval from the school business administrator that originated the competitive procurement will be obtained and documented;
 - e) Approval from the vendor that was awarded the contract (original solicitation) will be obtained and documented;
 - f) Approval to piggyback will be obtained and documented from the governing board during a regularly scheduled meeting following the public notice;
 - g) Notification to the vendor of final approval will be documented and issued; and
 - h) A contract with the vendor will be developed. The contractor shall agree to retain all books, records, and other documents relative to the contract agreement for three (3) years after final payment, or until audited by the board, whichever is sooner. The board, its authorized agents, and/or state and/or USDA auditors shall have full access to and the right to examine any of said materials during said period.

H. Records Retention

The Board of Education shall agree to retain all books, records, and other documents relative to the award of the contract for three (3) years after final payment. If there are audit findings that have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit. Specifically, the school business administrator or his or her designee shall maintain, at a minimum, the following documents:

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1. Written rationale for the method of procurement;
2. A copy of the original solicitation;
3. The selection of contract type;
4. The bidding and negotiation history and working papers;
5. The basis for contractor selection;
6. Approval from the state agency to support a lack of competition when competitive bids or offers are not obtained;
7. The basis for award cost or price;
8. The terms and conditions of the contract;
9. Any changes to the contract and negotiation history;
10. Billing and payment records;
11. A history of any contractor claims; and
12. A history of any contractor breaches.

I. Code of Conduct for Procurement

1. All procurements must ensure there is open and free competition and adhere to the most restrictive Federal, State, and local requirements. The Board of Education seeks to conduct all procurement procedures in compliance with stated regulations and to prohibit conflicts of interest and actions of employees engaged in the selection, award, and administration of contracts. All procurements will be in accordance with the Policy and all applicable provisions of N.J.S.A. 18A:18A – Public School Contracts Law.
2. No employee, officer, or agent may participate in the selection, award or administration of a contract supported by a Federal, State, or local 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.
3. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contracts 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.
4. 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. Based on the severity of infraction, the penalties could include a written reprimand to their personnel file, a suspension with or without pay, or termination.
5. All questions and concerns regarding procurement solicitations, contract evaluations, and contract award, shall be directed to the School Business Administrator/Board Secretary.

J. Food Service Management Company (FSMC)

1. In the operation of the school district's food service program, the school district shall ensure that the FSMC complies with the requirements of the Program Agreement, the school district's Free and Reduced School Lunch Policy Statement, all applicable USDA program policies and regulations, and applicable State and local laws. In order to operate an a la carte food service program, the FSMC shall agree to offer free, reduced price and full price reimbursable meals to all eligible children.
2. The school district shall monitor the FSMC billing invoices to ensure compliance with Federal and State procurement regulations.
3. In accordance with N.J.S.A. 18A:18A-5a.(22), RFP's are required in all solicitations for a FSMC.

K. Implementation

This procurement policy will be implemented immediately, reviewed regularly and revised as necessary for compliance with changes in law or changes in district practices.

Adopted: October 15, 2018

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Revised:

Key Words

School Lunch, Food Service, Nutrition, Wellness,

Legal References:	<u>N.J.S.A. 18A:11-1</u>	General mandatory powers and duties
	<u>N.J.S.A. 18A:18A-4.1 f.,h.</u>	Use of competitive contracting in lieu of public bidding; boards of education
	<u>N.J.S.A. 18A:18A-5</u>	Exceptions to requirement for advertising
	<u>See particularly:</u>	
	<u>N.J.S.A. 18A:18A-5a(6)</u>	
	<u>N.J.S.A. 18A:18A-6</u>	Standards for purchase of fresh milk; penalties; rules and regulations
	<u>N.J.S.A. 18A:33-3</u> through -5	Cafeterias for pupils
	<u>N.J.S.A. 18A:33-9</u> through -14	Findings, declarations relative to school breakfast programs
	<u>See particularly:</u>	
	<u>N.J.S.A. 18A:33-10</u>	
	<u>N.J.S.A. 18A:33-15</u> through -19	<u>Improved Nutrition and Activity Act (IMPACT Act)</u>
	<u>N.J.S.A. 18A:58-7.1</u> through -7.2	School lunch program
	<u>N.J.A.C. 2:36-1.1 et seq.</u>	Child Nutrition Programs
	<u>See particularly:</u>	
	<u>N.J.A.C. 2:36-1.7</u>	Local school nutrition policy
	<u>N.J.A.C. 6A:16-5.1(b)</u>	School safety plans
	<u>N.J.A.C. 6A:23A-1 et seq.</u>	Fiscal accountability, efficiency and budgeting procedures
	<u>See particularly:</u>	
	<u>N.J.A.C. 6A:23A-16.5</u>	Supplies and equipment
	<u>N.J.A.C. 6A:30-1.1 et seq.</u>	Evaluation of the Performance of School Districts
	Form 326 Procurement Procedures for School Food Authorities, New Jersey Department of Agriculture	
	Sec. 204 at the <u>Federal Child Nutrition and WIC Reauthorization Act of 2004</u> (P.L. 108-265)	
	42 <u>U.S.C. 1751 et seq.</u>	<u>Richard B. Russell National School Lunch Act</u>
	42 <u>U.S.C. 1771 et seq.</u>	<u>Child Nutrition Act of 1966</u>
	7 <u>CFR</u> Part 210 and 220	Healthy, Hunger-Free Kids Act of 2010
	7 <u>CFR</u> Part 210	Medically authorized special needs diets