



School Nutrition Program Procurement Policy

Procurement Procedures General Information

Procurement is a multi-step process for acquiring the best possible goods and services at the lowest possible price. **Encore Education Corporation (“Encore”)** 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, Encore 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

1. Micro-purchase Method (2 *CFR*, Section 200.320[a])

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

- a. The aggregate value of a single transaction is \$50,000 or less, effective August 1, 2020.
- b. Encore staff consider the price to be reasonable. Documentation (e.g., receipts and invoices) must be maintained for the prior three years plus the current program year or until the next California Department of Education (CDE) review, to document costs that are reasonable.

Encore will distribute micro-purchases equitably among qualified suppliers to the extent practical. Encore will ensure that purchases are made at a variety of stores. Encore will not limit its purchases to only one store unless it is not practical due to the distance of another store from the school office. Micro-purchases are used for goods and services that are needed on an emergency basis or for items needed occasionally (e.g., gluten-free products). It is 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 **district**.

Encore **does** not have a local small purchase threshold; therefore, Encore is required to adhere to the federal small purchase threshold of \$250,000 effective August 1, 2018. Encore will check the Federal Acquisition Regulation (FAR), Part 2, on the Acquisition.gov Web page at <https://www.acquisition.gov/?q=browsefar> annually on January 1 to verify the federal small purchase threshold.

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

Step 1: Encore administrator acting as Food Service Director (FSD), will develop and provide a clear and accurate description of the technical requirements of the goods or services to be procured to 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). 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 Encore's policy. Price quotes provided verbally by a vendor must be documented by the FSD on Encore Small Purchase Quotation form, available at the district administrative office. Encore Small Purchase Quotation forms and other forms of written quotes submitted by potential vendors will be retained by FSD 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.

Step 3: FSD will evaluate the written quotes received.

Step 4: FSD will award small purchases to the lowest priced responsible and responsive vendor that meets the requirements of the program outlined in the written technical requirements.

Step 5: FSD 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). Encore will be notified by the CDE of any changes to the micro-purchase and small purchase thresholds approved by the federal awarding ABCSD, 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 Encore. FSD 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 four one-year renewal options. Encore will complete the following steps when conducting formal procurements:

Step 1: FSD will develop a written solicitation, which will incorporate:

- a. A clear and accurate description of the technical requirements for the goods or services to be procured per 2 *CFR*, Section 200.319(c)(1).
- b. The requirement to comply with the Buy American Provision per 7 *CFR*, sections 210.21(d) and 220.16(d).
- c. 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*, Section 200.319(c)(2) to judge responsive and responsible firms.
- d. Instructions for responding vendors.
- e. The general terms and conditions of the contract.

Step 2: Encore's **purchasing manager (PM)** will advertise the solicitation in print and on websites six weeks prior to the deadline for submission of bids and proposals.

Step 3: FSD and purchasing manager will publicly open bids resulting from IFBs at the time and place prescribed in the solicitation. Encore will not publicly open proposals resulting from RFPs.

FSD and purchasing manager will evaluate offers from responding firms by using the evaluation criteria outlined in the solicitation for both IFBs and RFPs. Encore **should** receive at least two bids or proposals to evaluate the offers. If there is not a minimum of two respondents, FSD 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.

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. FSD and purchasing manager will use the School's RFP Technical Evaluation form, available at the district administrative office, to conduct a technical evaluation of all proposals received, as required by 2 *CFR*, Section 200.320(d)(1) for RFPs only. Encore's 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 4: FSD 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.

FSD will award the contract to the responsible and responsive respondent whose proposal is most advantageous to Encore, with price and other factors considered, for RFPs. 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 5: FSD will monitor the contract per 2 *CFR*, Section 200.318[b], by:

- a. Overseeing deliveries to ensure that the goods solicited for were received.
- b. 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.
- c. Ensuring that discounts, rebates, and credits in cost reimbursable contracts are provided

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

Encore 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 the delay resulting from competitive solicitation
- Encore received prior approval from the CDE after submitting a written request to the CDE with justification for conducting a noncompetitive procurement
- After solicitation from several sources, competition is determined inadequate

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

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

- a. While intergovernmental agreements can benefit Encore, the School may only enter into an intergovernmental agreement with a local government SFA (e.g., school district) which allows other schools to join or piggyback onto the local governmental entity when that agreement was procured and awarded consistent with federal and state procurement regulations.
- b. PM and school counsel will need to carefully review the solicitation issued by a cooperative or local government. PM and school counsel must ensure compliance with applicable federal, state, and local procurement rules. PM and school counsel will confirm that the addition of their purchasing power to the procurement does not create a material change in scope or in services.
- c. For cooperative purchasing, PM must maintain on file for the term of the contract plus extensions and three additional school years, or until the next review by the CDE, a copy of the solicitation and contract, proof of advertising, and bid award documents (e.g., evaluation documentation) from the lead SFA.
- d. For piggybacking, PM must obtain prior written permission from the lead SFA awarding the bid and the vendor 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) for the term of the contract plus extensions and three additional school years, or until the next review by the CDE.

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 SP38-2017)

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, 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 a meat/meat alternate 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.

FSD 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 FSD will be ensured by:

- Including the Buy American Provision requirement in 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 should 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 Memo 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

Note: Ingredients used to flavor, enhance, or prepare products (e.g., oil, spices, herbs, condiments, salad dressing) are not considered components that contribute to a reimbursable meal and should not be considered when determining the percent of domestic food components by weight or volume.

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

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

PM will ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, by taking the following affirmative steps:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- b. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.

- c. 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.
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- e. 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

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

Encore 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 Encore **already** has in place. FSD will provide PM with documentation justifying that the purchase of all goods and services requested are required and not duplicative prior to conducting a procurement.

Cost and Price Analysis (2 CFR, Section 200.323)

FSD will perform a cost or price analysis 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, FSD will make independent estimates before receiving bids or proposals to ensure the bids or proposals received are reasonable.

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

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

- a. Placing unreasonable requirements on firms in order for them to qualify to do business
- b. Requiring unnecessary experience and excessive bonding
- c. Organizational conflicts of interest
- d. Specifying only a brand name product instead of allowing an equivalent product to be offered
- e. Any arbitrary action in the procurement process

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

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

1. FSD will ensure that the description in the specification will always include a clause that an equivalent product is acceptable.
2. A copy of the specified brand or code will be posted on Encore's **website** by the purchasing manager so vendors can verify that the product they are bidding on is actually an equal.

3. Vendors bidding an item as an equal product to the brand name specified will be required to provide FSD with a product specification sheet and a sample case of the product for taste testing and verification by all **Encore 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])

Encore 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. Open and free competition cannot be circumvented. FSD 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 school.

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

The nonfederal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided, if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a **brand name** or **equivalent** description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand, which must be met by offers, must be clearly stated and identify all requirements which the offers must fulfill and all other factors to be used in evaluating bids or proposals.

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

Encore **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 Encore of any contractual responsibilities under its contracts. Violations of law will be referred to local, state, or federal authority having proper jurisdiction.

Encore **accepts** a prospective bidder's protest to a bid award if they believe 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 Encore Executive Director. Such protests must be made in writing and received by Encore's **Main** 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 Encore's Main 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.

Responsible and Responsive Contractors (2 CFR, Section 200.318[h])

Encore 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.

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

Encore will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, 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 breaches for the 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)]

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

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

Encore will require any successful respondent to provide proof of having and maintaining during the life of any contract with Encore, Public Liability and Property Damage Insurance to protect themselves and Encore 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 Encore enters into. Encore will not enter into a contract with any company or individual that has been debarred or suspended. Encore 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 awarded contracts are required to submit a completed Affidavit of Non-collusion, Debarment and Suspension Certificate, and Disclosure of Lobbying Activities. These forms will be included in the proposal package and must be completed prior to commencement of work.

Continuing Education/Training Standards (7 CFR, Section 210.30[d][1-6])

Encore has staff responsible for School Nutrition Programs (SNP) are required to engage in continuing education. Each school year, the SFA must ensure that all staff with responsibility for

SNPs that work an average of at least 20 hours per week, other than SNP directors and managers, completes annual training in areas applicable to their job. Beginning July 1, 2016, six hours of annual training are required. Part-time staff working an average of less than 20 hours per week must complete four hours of annual training beginning July 1, 2015. The annual training must include, but is not limited to, the following topics, as applicable to their position and responsibilities:

1. Free and reduced-price eligibility
2. Application, certification, and verification procedures
3. The identification of reimbursable meals at the point of service
4. Nutrition
5. Health and safety standards
6. Any specific topics identified by the USDA Food and Nutrition Service, as needed, to address program integrity or other critical issues.

Contact Information

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

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