



# Planning Your Future Procurements: State and Federal Code of Conduct and Purchasing Requirements

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# Procurement: The Hot Topic!

- Title 2, *Code of Federal Regulations* (2 CFR), Part 200, sections 200.318-200.326
- Streamline and simplify administration of federal grants
- Includes section on Procurement Standards
- Requires agencies to maintain written code of conduct and procurement procedure documents



*so why am i*  
**HERE?**



# Objectives

1. Understand what information is required in a written code of conduct
2. Understand what components must be included in written procurement procedures
3. Learn about the four different procurement methods and steps involved with each





# Let's Get Started!





# Code of Conduct and Procurement Procedures Checklist

- Code of Conduct and Procurement Procedures Checklist Web page at <http://www.cde.ca.gov/ls/nu/pr/index.asp> (under Resources)
- Include the components that pertain to your agency in your code of conduct and procurement procedures.





# Code of Conduct



# Written Code of Conduct, (Cont.)

## 2 *CFR*, Section 200.318(c)(1)

Agencies receiving federal awards 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.

Standards of Conduct = Code of Conduct



GeniusQuotes.net







# What is the Purpose of a Written Code of Conduct?

- Inform employees of the agency's expectations for proper behavior
- Promotes fairness and competition
- Protect the agency from lawsuits or a bad reputation



# Conflict of Interest

## 2 *CFR*, Section 200.318(c)(1)

No employees or affiliates of the agency should be involved in the procurement process if they have a real or apparent conflict of interest.

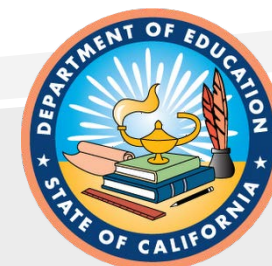


*"Try this—I just bought a hundred shares."*



# Who does the Code of Conduct cover?

- Employee, officer, or agent
- Any member of his or her immediate family
- His or her partner
- An organization which employs or is about to employ any of the parties listed above who has a financial or other interest in, or a tangible personal benefit from, a firm considered for contract





# Code of Conduct

## 2 *CFR*, Section 200.318(c)(1)

- Agencies must include disciplinary actions for violations of established code of conduct and share with all employees.
- Examples of disciplinary actions include:
  - Verbal warning or written reprimand
  - Fines
  - Suspension or termination





# Real versus Apparent Conflicts of Interest

1. Real—professional judgement is compromised because of a financial or tangible personal benefit
2. Apparent—a reasonable person would think that the professionals' judgment is likely to be compromised





# Conflict of Interest?



## Scenario

Bob Jones is the Program Director for a child care agency. He awarded a one year contract to his brother who owns a company which vends meals.





# Conflict of Interest?



## Scenario

Bob Jones is the Program Director for a child care agency. He just awarded a one year contract to his brother who owns a company which vends meals.

This is a real conflict of interest.







# Soliciting Gifts is Prohibited

## 2 *CFR*, Section 200.318(c)(1)

- Agencies must have a policy on prohibiting the solicitation of gratuities, favors, or items of monetary value from contractors or parties to subcontracts.





# Gratuities, Favors or Gifts: Decision Time!



## 2 *CFR*, Section 200.318(c)(1)



- Either no accepting gratuities, favors, or anything of monetary value, **or** agencies may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.





# Your Thoughts?



**Option One:** No gifts, gratuities or items of monetary value

**Option Two:** Set standards for accepting gifts, gratuities or items of monetary value





# Scenario



Tiffany Jones, Preschool Director

- Code of conduct allows employees to accept up to \$25 in unsolicited gifts per year

Paul Smart, owner of Tasty Meals (vendor) sends her:

- Box of candy (worth \$24)
- Baseball game tickets (worth \$200)

What should Tiffany do?



# Answer

Box of candy (worth (\$24) is allowable because her code of conduct allows this



Baseball game tickets (worth \$200) are not allowable.





# Organizational Conflicts of Interest

## 2 *CFR*, Section 200.318(c)(2)

- Agencies that have parent, affiliate, or subsidiary organizations that are not a government agency or Indian Tribe must address organizational conflicts of interest.
- Agencies must ensure that they are and appear to be impartial in conducting all program-related procurement.





# Political Reform Act—Government Agencies

The code of conduct must:

- Identify officials and employees within the agency who make government decisions based on the positions they hold
- Disclose their financial interests—Form 700
- Visit the California Fair Political Practices Commission Web page at <http://www.fppc.ca.gov/the-law/the-political-reform-act.html>





# Code of Conduct Activity

1. Break into groups
2. Review the Code of Conduct Worksheet
3. Write language for the component(s) your group is assigned on the worksheet below the component(s)
4. Choose a reporter and share with the group



# Next Steps



Does my agency have a written code of conduct?

- If no, develop a written code of conduct
- If yes, does the code of conduct include all the required elements or do I need to make revisions?







# Remember...

- Train designated staff on the code of conduct.
- Consider obtaining signatures from designated employees.
- Determine if you need approval by the governing board.





# Procurement Procedures

What components do we need to include?



# **Micropurchase Method**

**2 *CFR*, Section 200.320(a)**



# Regulations

## 2 *CFR*, Section 200.318(a)

- Agencies must use their own documented procurement procedures (that comply with all applicable regulations).



# What are Procedures?

Merriam-Webster's dictionary defines procedures as:

- A series of actions that are done in a certain way or order
- An established or accepted way of doing something



**The steps to comply with the rules!**





# Written Procedures

## Standard:

Arrive to work on time each day

## Written Procedures/Steps:

Step 1: Set alarm two hours before work

Step 2: Hit snooze button once

Step 3: Get up, get coffee, get ready

Step 4: Leave house one hour before work day

Step 5: Arrive at work on time



# What Must Procedures Include?

- The **procedures** must accurately describe how you obtain goods and services
- They must **match your actual procedures**
- They must include **steps in all methods used** and other applicable components on **checklist**





# Procurement Methods

- **Four methods:**
  1. Micropurchase #7
  2. Small purchase #8
  3. Formal purchase #9
  4. Noncompetitive #10
- Procurement procedures should include each step
- Only include procedures for methods used by your agency





# **Micropurchase Method**

**2 *CFR*, Section 200.320(a)**



# Micropurchase Method Criteria

1. Equal to or below **\$3,500** per transaction
2. Price of goods and services is considered **reasonable**
3. Purchases are **distributed equitably** among qualified suppliers when **practicable**



**Bids  
Quotes**

**\*Procedures must list steps your agency takes to ensure each criteria is met**



# Per Transaction?

- $\leq$  \$3,500 **per transaction** – not calendar year or per item, etc.
- **Do not knowingly** break out transactions to avoid using other procurement methods
- Shop weekly but store invoicing monthly...?





# Prices Are Not Reasonable!

- When prices are not considered reasonable, the small purchase method must be followed.
- Helpful tips:
  1. Identify the top ten items purchased.
  2. Compare prices from stores within a reasonable distance from the agency.
  3. Document the store with the lowest prices.
  4. Keep this documentation on file.

# When Practicable...?

- If an agency is in a rural setting and only has access to one store, it is **not practicable** to drive a great distance to spread purchases equitably.  
**Document this!**







# Small Purchase Method

2 *CFR*, Section 200.320(b)



# 2016 Small Purchase Thresholds

- Over \$3,500\* (micropurchase threshold)
- Under \$150,000\* for most agencies
- Under \$87,800\* for public schools and county offices of education

\*Thresholds fluctuate





# Small Purchase Procedures

- **Step 1: Draft specification in writing**
  - Include a clear and accurate description of the goods or services desired (2 *CFR*, Section 200.319[c][1]) **#12**
  - Include **or equivalent** if brand name listed (2 *CFR* 200.319[a][6]) **#16**
    - Include steps to evaluate equivalent criteria
  - Do not be so detailed that competition is limited





# Small Purchase Procedures

- **Step 2: Contact vendors and get quotes**
  - Contact an adequate number of vendors
  - Document quotes in writing and retain the records
  - Encouraged to contact small and minority businesses, **#4**





# Small Purchase Procedures

- **Step 3: Evaluate the quotes**
  - Pick the quote that is the lowest price
  - Make sure the bidder is **responsive** and **responsible, #23**



Can meet terms and conditions



Can successfully perform





# Small Purchase Procedures

- **Step 4: Choose your vendor**
    - Choose the lowest price quote of responsive and responsible vendor
    - Document your decision and steps taken to reach decision
    - Include steps for procurement disputes (2 *CFR*, Section 200.318[k])
- #24**





# Small Purchase Procedures

- **Step 5: Monitor the contract** (2 *CFR*, Section 200.318[b])  
**#25**
  - Make sure the vendor is meeting your terms and conditions
    - Deliver at times agreed upon
    - Meet the CACFP Meal Pattern
  - Include a clause allowing for termination if vendor is not responsive or responsible





# Formal Purchase Method

2 *CFR*, Section 200.320(c)



# 2016 Small Purchase Threshold

- Over \$150,000\* for most agencies
- Over \$87,800\* for public schools and county offices of education

\*Thresholds fluctuate yearly



# Cost and Price Analysis



## 2 *CFR*, Section 200.323

- **Step 1A: Conduct a cost and price analysis #11**
  - For all contracts over the small purchase threshold, and contract modifications, agencies must perform a cost or price analysis to obtain an independent estimate of price **before** receiving bids or proposals.







# Formal Purchase Procedures

- **Step 1B: Develop solicitation in writing – Two tools**
  1. Invitation for Bid (IFB), “sealed bid”
    - Price is the only consideration
    - Awarded to a responsive and responsible vendor with lowest price
    - Example: milk vendor with exact specifications that do not differ among vendors





# Formal Purchase Procedures

- **Step 1B: Develop solicitation in writing – Two tools**

- 2. Request for Proposal (RFP)

- Factors other than price are considered (e.g. menu quality, past performance)
    - Awarded to vendor who provides the best overall value
    - Example: vended meal contract -





# Specification Reminders

- Include a clear and accurate description of the goods or services desired (2 *CFR*, Section 200.319[c][1]) **#12**
- Include **or equivalent** if brand name listed (2 *CFR* 200.319[a][6]) **#16**
  - Include steps to evaluate equivalent criteria
- Do not be so detailed that competition is limited – (e.g. deliver to 10 sites within 15 minutes)





# Contractor Involvement

## 2 *CFR*, Section 200.319(a), #13

- Contractors **must be excluded** from competing for a procurement if they develop or draft:
  - Specifications
  - Requirements
  - Statements “scope” of work
  - IFBs or RFPs





# Formal Purchase Procedures

## 2 *CFR*, Section 200.320(2)

- **Step 2: Publicly advertise the solicitation, #27**
  - School districts
    - General circulation publication once/week for minimum of two weeks
  - Other agencies
    - General circulation publication for **sufficient** amount of time prior to date of opening bids





# Formal Purchase Procedures

## 2 *CFR*, Section 200.319(c)(2)

- **Step 3: Objectively evaluate the bids, #22**
  - Evaluate the responses using the criteria outlined in the solicitation
  - Ensure the vendor is responsive and responsible, **#23**
  - Document the evaluation of every offer (be objective!)
    - IFB—negotiation **not** allowable
    - RFP—negotiation allowable





# Formal Purchase Procedures

- **Step 4: Award the contract**
  - Lowest price (IFB)
  - Best value (RFP)
  - Responsive and responsible vendor, **#23**
  - Include steps for bid protests (2 *CFR*, Section 200.318[k]) , **#24**





# Formal Purchase Procedures

## 2 *CFR*, Section 200.318(b)

- **Step 5: Monitor the contract, #25**
  - Make sure the vendor is meeting your terms and conditions
  - Include a clause for termination if vendor is not responsive or responsible







I  
❤️  
Procurement



# **Noncompetitive Purchase Method**

**2 *CFR*, Section 200.320(f)**



# Noncompetitive Procedures

- Process for procuring goods or services that cannot be conducted through normal competitive procurement
- Include steps taken to avoid this method
- Provide written justification
- Obtain **pre-approval** from the CDE





# Maintenance of Records

## 2 *CFR*, Section 200.318(i), #26

- 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





# Duplication of Goods/Service

## 2 *CFR*, Section 200.318(d), #3

- Describe the process used to ensure that there is no acquisition of unnecessary or duplicate goods or services.
- **Purchases must be necessary!**



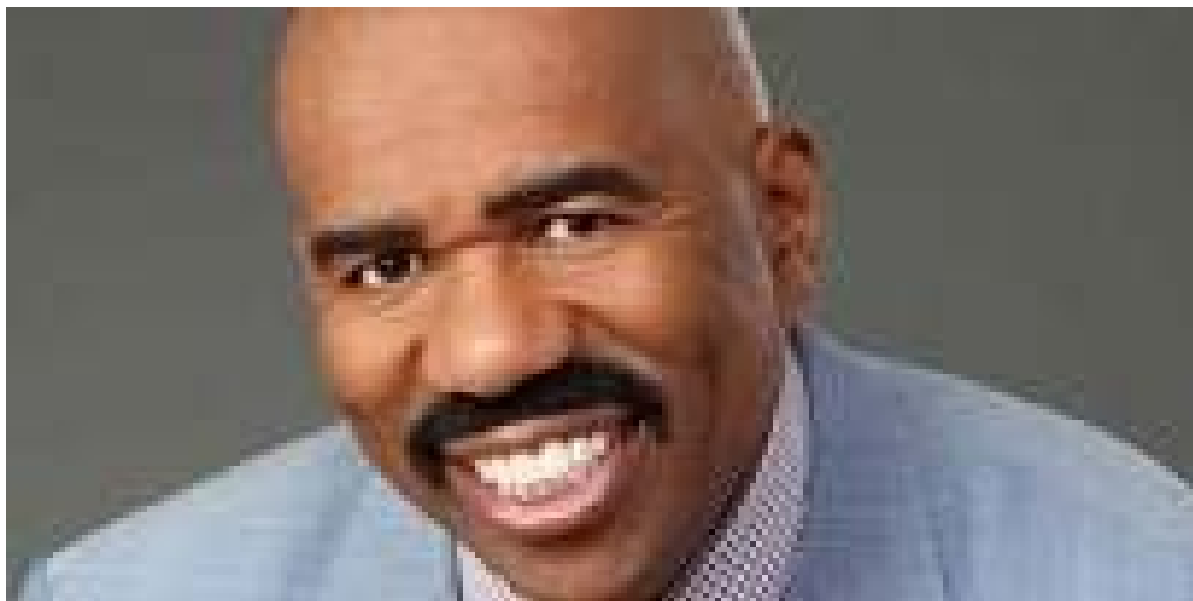
# Procurement Procedure Components


- Some components are required by all agencies.
- Other components may or may not be required. It depends upon their procurement process.
- Check the components that pertain to your agency, then refer to these later when writing your procedures.



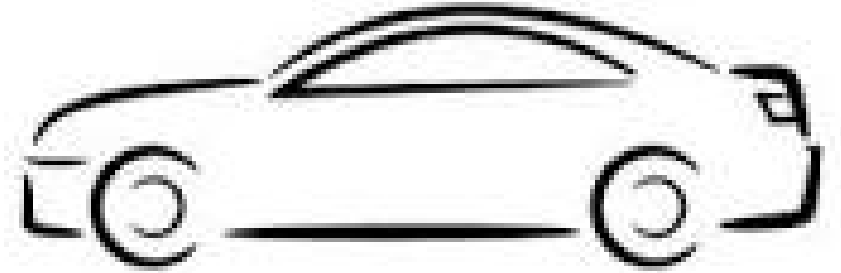


# **Are you Ready to Play Friendly Feud!**





# Today, Everyone's a Winner and Leaving with a...



- Brand New
- Fuel Efficient
- Procurement Infusion!







# Choose Among Five Answers



- 1) General procurement guidance
- 2) Micropurchase procedures
- 3) Small purchase procedures
- 4) Formal purchase procedures
- 5) Not a valid procedure

These procedures include issuing an IFB or an RFP.



# Answer: The Formal Purchase Methods

1. **IFB**—publicly announced opened publicly. Award is based upon price alone.
2. **RFP**—publicly announced but not opened publicly. Award is based on highest score. Price is the highest weighted factor but not the only factor.





# Choose Among Five Answers



KEEP  
CALM  
AND  
PICK  
ONE



- 1) General procurement guidance
- 2) Micropurchase procedures
- 3) Small purchase procedures
- 4) Formal purchase procedures
- 5) Not a valid procedure

Requires agencies to distribute their purchases equitably among qualified suppliers.



# Answer: The Micropurchase Method

To the extent practicable,  
spread purchases equitably  
among qualified suppliers.



# Choose Among Five Answers



- 1) General procurement guidance
- 2) Micropurchase procedures
- 3) Small purchase procedures
- 4) Formal purchase procedures
- 5) Not a valid procedure

Requires agencies to throw out receipts once the cost is logged into the food program account.





# Answer: Not a Valid Procedure

Records must be maintained to detail the history of procurement.



- 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



# Choose Among Five Answers



- 1) General procurement guidance
- 2) Micropurchase procedures
- 3) Small purchase procedures
- 4) Formal purchase procedures
- 5) Not a valid procedure

Specifying a brand name product in a solicitation without the allowance of **an equal** product is allowable.





# Answer: Not a Valid Procedure

Procedures should indicate that when brand names are included in specifications, “or equivalent” is included as well.



*or equivalent*





# Choose Among Five Answers



- 1) General procurement guidance
- 2) Micropurchase procedures
- 3) Small purchase procedures
- 4) Formal purchase procedures
- 5) Not a valid procedure

These procedures are informal and involve contacting vendors to receive quotes from an adequate number of qualified suppliers.





# Answer: Small Purchase Procedures

Agencies should use the small purchase procedures and receive an adequate number of quotes when single purchase transactions are less than the small purchase threshold.





# Choose Among Five Answers



- 1) General procurement guidance
- 2) Micropurchase procedures
- 3) Small purchase procedures
- 4) Formal purchase procedures
- 5) Not a valid procedure

Contractors must be excluded from competing for procurements if they develop or draft specifications, requirements, statements of work, or IFBs or RFPs.





# Answer:

1. General Procurement Guidance
2. Small Purchase Procedures
3. Formal Purchase Procedures



Procedures should state that contractors must be excluded from competing for procurements if they develop or draft specifications, requirements, statements of work, or IFBs or RFPs.





# Choose Among Five Answers



- 1) General procurement guidance
- 2) Micropurchase procedures
- 3) Small purchase procedures
- 4) Formal purchase procedures
- 5) Not a valid procedure

For all contracts over the small purchase threshold and contract modifications, agencies must do a cost and price analysis prior to developing the solicitation.





# Answer: General Procurement Guidance

If an agency has contracts over the small purchase threshold or contract modifications, procedures must include performing a cost or price analysis to obtain an independent estimate of price before receiving bids or proposals.





# Choose Among Five Answers



- 1) General procurement guidance
- 2) Micropurchase procedures
- 3) Small purchase procedures
- 4) Formal purchase procedures
- 5) Not a valid procedure

Agencies can use other agencies procedures for procurement.



# Answer: General Procurement Guidance

The agency must use its own documented procurement procedures which reflect applicable state, federal, local laws, and regulations.







# What Agencies Need to Do



**All** agencies are required to:


- Develop and follow a **written code of conduct**
- Develop and follow **written procurement procedures** that reflect actual practices
- Comply with federal, state, and local regulations and laws when procuring goods and services





# Prerecorded Procurement Webinars

- Procurement Standards for Small Agencies




For agencies that only make purchases below \$3,500

- The Informal Purchase Method
- Code of Conduct and Written Procurement Procedures



For agencies with single purchase transactions over \$3,500

- The Formal Purchase method



For agencies with single purchase transactions over the small purchase threshold

CDE Procurement in CNPs Web page at  
<http://www.cde.ca.gov/ls/nu/pr/index.asp>





# Questions?

## CACFP Specialists:

Contact information is listed on the CDE CACFP Web page at <http://www.cde.ca.gov/ls/nu/cc/cacfpcontact.asp>

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