

DOCUMENTED PROCUREMENT PROCEDURES CHILD NUTRITION PROGRAMS

2 CFR 200.318(a)

This procurement plan will be implemented on February 1, 2019 and in force from this date forward until amended. All procurements must adhere to free and open competition. The Banks School District will retain all documentation for each procurement per regulations.

Joni Spencer

Authorized Signature

February 1, 2019

Date

BANKS SCHOOL DISTRICT

PROCUREMENT PLAN

The Banks School District will purchase goods, products, and/or services for use in the Child Nutrition Programs (CNP) in compliance with 2 CFR Part 200 as well as 7 CFR Part 210, 220, 225, 226. Procurement standards are specifically located in 2 CFR 200.317-326 (Federal Awards and Grants), 7 CFR 210.21 (NSLP), 7 CFR 220.16 (SBP), 7 CFR 225.17 (SFSP), and 7 CFR 226.22 (CACFP). (Note Parts 3016 and Part 3019 have been superseded by 2 CFR Part 200 as adopted and supplemented by USDA in 2 CFR Part 400 for the SFSP and other Child Nutrition Programs.

The primary purpose of these written procurement procedures is to assure full and open competition, transparency in transactions, comparability, and documentation of all procurement activities. The procurement process practiced by the Banks School District will not restrict or eliminate competition. For example description of goods, products, and/or services to be procured should not contain features that unduly restrict competition. Competition helps assure that goods, products, and/or services will be obtained that best meets the District's needs.

It will be the responsibility of the Business Manager to evaluate the procurement needs and forecast the amounts to be purchased so the correct method of procurement will be followed.

The Banks School District will perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold including contract modifications **(2 CFR 200.323(a))**.

Regardless of procurement method, the following factors will be determined regarding the allowability of costs:

- Be necessary and reasonable for proper and efficient administration of the program(s)
- Be allocable to federal awards applicable to the administration of the program(s)
- Be authorized and not prohibited under federal, state, and local laws.

.Purchasing will be conducted at the most restrictive procurement threshold:

Procurement Method	Federal Threshold	State of Oregon Threshold	Banks School District Procurement Threshold
Micro-Purchasing	\$10,000- 2 CFR 200.67 & 2 CFR 200.320(b)	-----	\$10,000
Informal Small Purchase/Intermediate Procurement	Less than \$250,000- 2 CFR 200.320(b)	Less than \$150,000- ORS 279B-070	Less than \$150,000
Formal (IFB/RFP)	Greater than \$250,00 or any total Food Service Management Contract- 2 CFR 200.320(c)(d)	Greater than \$150,000- ORS 279B-055 & ORS 279B.060	Greater than \$150,000
Capital Equipment	Over \$5,000-2 CFR 200.33	Over \$5,000	Over \$5,000

All staff conducting purchasing will be trained on the procurement procedures. Procurement training available on Agency website at: <http://www.oregon.gov/ode/students-and-family/childnutrition/Pages/Procurement.aspx>

A. Micro-Purchase procedures (2 CFR 200.67 & 2 CFR 200.320(a)). This method applies to the purchase of supplies or services when the aggregate dollar amount does not exceed \$10,000. These purchases may be awarded without soliciting competitive quotes if the Sponsor considers the price reasonable in accordance with 2 CFR 200.404. The Sponsor must distribute the micro-purchases equitably among qualified suppliers and document all purchases.

- The Business Manager is responsible for contacting potential vendor/contractor.
- The Business Manager is responsible for documentation of records of the purchase, name of vendor/contractor, price, and the written specifications.
- The Business Manager is responsible for documentation that the actual product was received.
- The Business Manager is responsible for documentation that purchases are distributed equitably among qualified suppliers with reasonable prices.
- The Business Manager is required to sign documentation, confirming a review and the approval of the purchase of the goods, products, and/or services.

B. Federal Informal small purchase/State of Oregon Intermediate Procurement procedures (2 CFR 200.320(b), ORS 279B.070). This method applies for purchases of goods, products, and/or services when the aggregate dollar amount is less than \$150,000. Price or rate quotes must be obtained from three (3) or more qualified sources and all purchases must be documented.

- In developing the written specifications, the same information needs to be used for all vendors/contractors. The Banks School District may do its own market research and use prices found online, in catalogs, newspapers, farmer's markets, or obtain prices from grocery stores.
- Each vendor/contractor will be given an opportunity to provide a price or rate quote on the same written specifications.
- The Business Manager is responsible for contacting potential vendors/contractors when price or rate quotes are needed.
- The price quotes are to remain confidential information until the actual award has been made.
- Quotes are awarded by the Business Manager. Quotes will be awarded to the lowest and best quote based upon price, quality, and service availability.
- The Business Manager is responsible for documentation of records to show selection of vendor/contractor, reasons for selection, names of all vendors/contractors contacted, price quotes from each vendor/contractor, and written specifications.

- The Business Manager is responsible for documentation that the actual product specified is received.
- Any time an accepted item is not available, the Business Manager will select the acceptable alternate. The Business Manager will document the reason for accepting an alternate and keep the documentation on file.
- When using the Federal small purchase method /Oregon Intermediate Procurement, the award will always be given to the most responsive and responsible vendor at the lowest price.
- The Business Manager is required to sign documentation, confirming a review and the approval of the purchase of the goods, products, and/or services.
- The Business Manager is the Sponsors authorized purchaser.

C. Formal purchase procedures: Competitive Sealed Bidding (IFB) & Competitive Sealed Proposals (RFP) (2 CFR 200.320(c)(d), ORS 279B.055, ORS 279B.060). This method applies to purchases of supplies or services when the aggregate cost amount is more than \$150,000 or greater than the Banks School District's simplified acquisition threshold or for any Food Service Management Company contract. The formal procurement method requires the use of an Invitation for Bid (IFB) or a Request for Proposal (RFP).

- The Business Manager is the Sponsors authorized purchaser.
- An announcement of an **Invitation for Bid (IFB) or a Request for Proposal (RFP)** will be placed in the newspaper, website and other internet sources to publicize the intent to purchase needed items. The advertisement for bids/proposals or legal notice will be run for five business days.
- An advertisement is required for all purchases over the simplified acquisition threshold. The announcement (advertisement or legal notice) will contain a general description of items to be purchased, the deadline for submission of sealed IFB's and RFP's and the address where complete specifications and other procurement documents may be obtained.
- In an IFB or RFP, each vendor/contractor will be given an opportunity to bid on the same specifications.
- The developer of written specifications or descriptions for procurements will be prohibited from submitting bids or proposals for such products or services.
- The IFB or RFP will clearly define the purchase conditions. The following, shall be addressed in the procurement document:
 - (1) Contract time period
 - (2) Banks School District is responsible for all contracts awarded (statement)
 - (3) Date, time, and location of bid opening
 - (4) How vendor/contractor will be informed of bid acceptance or rejection

- (5) Delivery schedule
- (6) Requirements which bidder must fulfill in order for bid to be evaluated
- (7) Benefits to which the Banks School District will be entitled if the contractor can not or will not perform as required
- (8) Statement assuring positive efforts will be made to involve minority and small business
- (9) Statement regarding the return of purchase incentives, discounts, rebates, and credits to the Banks School District's Child Nutrition account
- (10) Contract and/or purchase orders may be issued for firm fixed prices after formal bidding process
- (11) Price adjustment clause based on appropriate standard or cost index
- (12) Method of evaluation and type of contract to be awarded
- (13) Method of award announcement and effective date (if intent to award is required by State or local procurement requirements)
- (14) Specific bid protest procedures including contact information of person and address and the date by which a written protest must be received
- (15) Provision requiring access by duly authorized representatives of the Banks School District, State Agency, United States Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts.
- (16) Method of shipment or delivery upon contract award.
- (17) Program Regulations: The contractor shall be in conformance with the applicable portions of the Banks School District's agreement under the program. The contractor will conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, 226 and 250.
- (18) The contractor shall provide products that meet the Public Law 111-296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). The contractor's products shall meet grade level caloric, sodium, saturated fat, and trans fat requirements as applicable for your program.
- (19) Affordable Care Act: The contractor understands and agrees that it shall be solely responsible for compliance with the patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). The contractor shall bear sole responsibility for providing health care benefits for its employees who provide services to the Banks School District as required by State or Federal law.
- (20) Buy American Provision (applies to NSLP, SBP, and USDA Foods): The contractor will purchase, to the maximum extent practicable, domestic commodities or products in accordance with 7 CFR 210.21(d) and 7 CFR 220.16(d). The contractor shall purchase, to the maximum extent practicable, domestic agricultural commodities or products substantially processed in the United States. "Substantially" means the final processed product contains over 51% domestically grown agricultural commodities.
This provision applies to all food purchases paid from the nonprofit school food services account. There are limited exceptions to this provision which allow for the purchase of products not meeting the "domestic" standard as described above (*non-domestic*) in circumstances when use of domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food products should be considered.
- (21) Disclosure of Lobbying Activities: Pursuant to Byrd Anti-Lobbying Amendment 31 USC 1352, the contractor must disclose lobbying activities in connection with school nutrition programs. If there are material changes after the initial filing,

- updated reports must be submitted on a quarterly basis. 2 CFR 200.326, 2 CFR 200.450 and 2 CFR 200 Appendix II **(Only applies to contracts over \$100,000)**
- (22) Certification Regarding Lobbying: Pursuant to 31 USC 1352, the contractor must submit a certification regarding lobbying which conforms in substance with the language provided in 2 CFR 200.450. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions. **(Only applies to contracts over \$100,000).**
- (23) Certificate of Independent Price Determination: The vendor admits that all prices in their Offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor certification regarding non-collusion.
- (24) Civil Rights Compliance: In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information required in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (a) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.
- (25) Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulation: The contractor will comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations which prohibit the use, under nonexempt federal contracts, grants or loans to facilities included on the EPA list of Violating Facilities. The Banks School District will report all violations to ADE and to the USEPA Assistance Administrator for Enforcement. **(Only applies to contracts over \$100,000)**
- (26) Contract Work Hours and Safety Standard Act: The contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). **(Only applies to contracts over \$2,500).**
- (27) Debarment, Suspension, Ineligibility and Voluntary Exclusion: By signing the Offer & Award form, the contractor shall certify that they have not been debarred,

suspended, or otherwise excluded from or ineligible for participations in federal assistance programs under executive order 12549 and 12689. The contractor shall comply with regulations implementing Office of Management and Budget Guidance in Non-procurement Debarment and suspension codified at 2 CFR 180, 2 CFR 417, and ORS 279B.130. These regulations restrict transactions with certain parties that are debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs or activities. (2 CFR 180.220(b)(1): **Applies to contracts equal or exceed \$25,000**).

- (28) Energy Policy and Conservation Act: The contractor shall meet the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act. (Pub. L. 94-163,89 Stat.871)
- (29) Equal Employment Opportunity: The contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations. (41 CFR Chapter 60)
- (30) Record Keeping: The books and records of the contractor pertaining to operations under this agreement shall be available to the Banks School District at any reasonable time. These records are subject to inspection or audit by representatives of the Banks School District, State Agency, the USDA, and the US General Accounting Office at any reasonable time and place. The Banks School District shall maintain such records, for a period of not less than three (3) years after the final day of the contract, or longer if required for audit resolution. (7 CFR 210.23(c), and 2 CFR Part 200.333).
- (31) Invoicing: The contractor fully discloses all discounts, rebates, allowances and incentives received by the Banks School District from its suppliers. If the contractor receives a discount, rebate, allowance, or incentive from any supplier, the contractor must disclose and return to the Banks School District the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the Banks School District. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoice presented to the Sponsor for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. (2 CFR 200 and 7CFR 210.21)
- No expenditure may be made from the nonprofit food service account for any cost resulting from a cost-reimbursable contract that fails to include the requirements of 2 CFR 200 and 7 CFR 210, nor may any expenditure be made from the nonprofit food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, next allowable costs. (2 CFR 200 and 7 CFR 210.21)
- (32) Termination Clause: The contract may be terminated for cause and for convenience by the Banks School District. Appendix II to 2 CFR Part 200. **(Only applies to contracts over \$10,000)**.
- (33) Signed statement of non-collusion.
- (34) For building projects:
Copeland "Anti-Kickback" Act
All contracts and sub grants in excess of \$2000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act.
- (35) Davis-Bacon Act.
The contractor shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7)

as supplemented by Department of Labor regulations. (29 CFR Part 5)

- Specifications will be prepared and provided to potential vendors/contractors desiring to submit IFB or RFP for the products or services requested. Vendors/contractors will be selected using the Banks School Districts procedures:
 1. Does the vendor's product meet the required specifications?
 2. Does the vendor's delivery schedule meet the Banks School District's needs?
- If any potential vendor/contractor is in doubt as to the true meaning of specifications or purchase conditions, an interpretation will be provided by the Business Manager.
- The Business Manager is responsible for securing all IFB or RFP.
- The Business Manager is responsible to ensure all Banks School District's procurements are conducted in compliance with applicable Federal regulations, State General Statutes or policies of the Sponsor.
- The following criteria will be used in awarding contracts as a result of bids:
 1. Price
 2. Services
 3. Quality
 4. Geographic Preference
- In awarding a competitive negotiation (RFP), a set of award criterion 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 when awarding a contract. Following evaluation and negotiations a firm fixed price or cost reimbursable contract is awarded.
- The contracts will be awarded to the responsible bidder/proposer whose bid or proposal is responsive to the invitation and best meets the needs of the Banks School District, price, and other factors considered. Any and all bids or proposals may be rejected in accordance with law.
- The Business Manager 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.
- The Business Manager will review the procurement system to check ensure compliance with applicable laws.
- The Business Manager is responsible for documentation that the actual product specified is received.
- Any time an accepted item is not available, the Business Manager will select the acceptable alternate. The contractor must inform Business Manager as soon as reasonably possible if a product is not available. In the event a non-domestic

agricultural product is to be provided to the CNP Sponsor, the contractor must obtain, in advance, the written approval of the product. The Business Manager must comply with the Buy American Provision.

- Full documentation as to the reason an accepted item was unavailable, and to the procedure used in determining acceptable alternates, will be available for audit and review. The person responsible for this documentation is Business Manager.
- The Business Manager is responsible for maintaining all documentation of the procurement process.

D. Procurement by Noncompetitive Proposals (2 CFR 200.320(f)): Procurement by noncompetitive proposal will only be used if one or more of the four circumstances apply:

1. Item is available **only** from a single source (aka Sole Source),
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Business Manager.
4. After solicitation of a number of sources, competition is determined inadequate.

When a noncompetitive proposal is used the Banks School District must:

- Provide written Specifications will be prepared and provided to the vendor/contractor.
- The Business Manager is responsible for the documentation of records to fully explain the decision to use the non-competitive negotiation. The records will be available for audit and review.
- The Business Manager is responsible for documentation that the actual product or service specified was received.
- The Business Manager is responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive negotiation are met.
- Non-competitive negotiations shall be used for one-time purchases of a new food item in order to determine food acceptance by students and for samples for testing purposes. A record of non-competitive negotiation purchase shall be maintained by the Program Official. The record of non-competitive purchases shall include, at a minimum, the following:
 - a. Item name
 - b. Dollar amount
 - c. Vendor/contractor, and
 - d. Reason for non-competitive procurement

E. Emergency Procurement (2 CFR 200.320(f)(2)). If it is necessary to make an emergency procurement to continue service, the purchase shall be made, and a log of all such purchases shall be maintained by the Business Manager. The following emergency procedures shall be followed. All emergency procurements shall be approved by the Business Manager. At a minimum, the following emergency procurement procedures shall be documented:

- a. Item name
- b. Dollar amount

- c. Vendor/contractor, and
- d. Reason for emergency

F. Internal Controls and Record Keeping (2 CFR 200.61, 2 CFR 200.62, 2 CFR 200.333, 2 CFR 200.336):

The Banks School District and contractor shall agree to retain all books, records and other documents relative to the contract agreement for three (3) years after final payment. The Banks School District, its authorized agents, State Agency, and/or USDA auditors shall have full access to and the right to examine any of said materials during said period. Specifically, the Banks School District shall maintain, at a minimum, the following documents:

- a. Written rationale for the method of procurement;
- b. A copy of the original solicitation;
- c. The selection of contract type;
- d. The bidding and negotiation history and working papers'
- e. The basis for contractor selection;
- f. Approval from the State agency to support a lack of competition when competitive bids or offers are not obtained;
- g. The basis for award cost or price;
- h. The terms and conditions of the contract;
- i. Any changes to the contract and negotiation history;
- j. Billing and payment records'
- k. A history of any contractor claims; and
- l. A history or any contractor breaches.

G. Equipment Purchases(2 CFR 200.33, 2 CFR 200.439): If the amount of purchase for equipment is greater than \$5,000, the following procedure is used. Equipment means tangible personal property (including information technology systems) having a useful life of more than one (1) year and per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statements purposes, or \$5,000. During an administrative review, as required by 7 CFR Part 210.18, and audits as required by 2 CFR 200.501, the Banks School District's equipment purchases will be reviewed. The Banks School District may purchase any equipment from the Pre-Approved Capital Equipment List (see list located at: <http://www.oregon.gov/ode/students-and-family/childnutrition/Documents/capital-equipment-fns-pre-approved-list-06162016-final.pdf>) following proper Federal, State, or local procurement procedures, as applicable, without submitting a *Capitol Equipment Purchase Request* to Agency for approval.

- The Business Manager will develop written specifications of required equipment and provide them to vendors.
- Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. An adequate number of vendors shall be contacted.
- The price quotes will receive appropriate confidentiality before award.
- If using the nonprofit food service account or USDA funding for the purchase, the Banks School District will seek prior approval from the Oregon Department of Education by completing the Capital Expenditure Pre-Approval Request.
- Quotes will be awarded by Business Manager. Quotes awarded will be to the lowest and best quote based upon quality, service availability, and price.
- The Business Manager is responsible for documentation of records to show selection of vendor, reasons for selectin, names of all vendors contacted, price quotes from each vendor, and written specifications.

- The Business Manager is responsible for documentation that the actual product specified is received.

H. Standards of Conduct (2 CFR 200.318(c)): The Banks School District must maintain a written code of standards of conduct that includes procedures that governs the performance of its officers, employees, or agents who are engaged in the award and administration of contracts supported by Child Nutrition Program Funds.

The following conduct will be expected of all persons who are engaged in the awarding and administration of contracts supported by Child Nutrition Program Funds.

- No employee, officer or agent of the Banks School District shall participate in the selection or in the award or administration of a contract supported by program funds if a conflict of interest, real or apparent, would be involved.
- Conflicts of interest arise when one of the following has a financial or other interest in the firm selected for the award:
 - a. The employee, officer or agent;
 - b. Any member of the immediate family;
 - c. His or her partner;
 - d. An organization which employs or is about to employ one of the above;
 - e. A less-than-arms-length transaction. This is one party's ability to control or influence the other party to the transaction. A less-than-arms-length transaction occurs:
 - i. when a transaction is conducted between related parties, meaning that the integrity of the transaction could be compromised;
 - ii. When one party to the transaction is able to control or influence the actions of the other party.

Examples could include:

1. Hiring the CEO's brother as a janitor.
 2. Purchasing goods or services from a business owned by an officer, employee, or relative of the Banks School District.
 3. Agreement for computer maintenance between a business and person who are related to the Banks School District's employees or board members.
- The Banks School District employees, officers or agents must not solicit or accept gratuities, favors, or anything of monetary value from prospective contractors/vendors, potential contractors, or parties of subcontract.
 - The Banks School District must set standards when financial interest is not substantial or the gift is an unsolicited item of nominal value and may be acceptable.
 - Disciplinary actions to be applied for violation of the Banks School District written standard of conduct are in Board policy.

I. Minority, Women Owned and Small Business (2 CFR 200.321): The Banks School District must take all necessary affirmative steps to assure that minority business, women business enterprise, and labor surplus area firms are used when possible.

The following affirmative steps must be used in determining if a firm is available:

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

A resource available to use is Certification Office for Business Inclusion and Diversity (COBID). This site provides information on Minority/Women Business Enterprise (MWBE), Emerging Small Business (ESB) and Disadvantaged Business Enterprise (DBE).

<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?XID=6787&TN=oregon4biz>

J. Intergovernmental Agency (2 CFR 200.318(e)). The Banks School District 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.

K. The Banks School District alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a federal concern. Violations of law will be referred to local, State, or Federal authority having proper jurisdiction. (2 CFR 200.318)

L. Buy American Provision Requirements (7 CFR 210.21(d), & CFR 220.16(d)): 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 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodities or products. This Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture.

Limited exceptions to the Buy American provision. There are limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the "domestic" standard as described above (i.e., "non-domestic") in circumstances when use of domestic foods is truly not practicable. These exceptions, as determined by the Business Manager, are:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

Compliance with, and monitoring of, the Buy American provision by SFAs. To ensure compliance with the Buy American provision the SFA must ensure solicitation and contract language includes the requirement for domestic agricultural commodities and products. The Banks School District must also include the Buy American requirement in its documented procurement procedures and retain records documenting any exceptions. The Banks School District should ask the supplier, i.e., manufacturer or distributor, for specific

information about the percentage of U.S. content in any processed end product. In order for the Business Manager to be able to document the domestic content, they should include in their procurement process a requirement for certifying the domestic percentage of the agricultural food component of commodities and products.

Solicitation and contract language must be monitored by the Business Manager to determine contractor compliance as required by 2 CFR 200.318(b), in order to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Monitoring is also accomplished by reviewing products and delivery invoices or receipts to ensure the domestic food that was solicited and awarded is the food that is received. The Business Manager also needs to conduct a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses to ensure the products received are the ones solicited, and awarded, and comply with the Buy American provision.