



FENTON CHARTER PUBLIC SCHOOLS

Procurement and Purchasing Procedures

Revised and Adopted: June 13, 2019

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Procurement and Purchasing Procedures

I. PURPOSE

These procedures are designed to enable the Fenton Charter Public Schools (FCPS), a Charter Management Organization established in March 2011, and its various schools, to purchase, establish contracts and generally carry on its procurement functions in a manner that deals equitably with all vendors and provides for efficient management and proper expenditure of public monies.

The formal approval by the FCPS Board of Directors at the June 13, 2019 regular meeting establishes this document as the recognized policy of the FCPS Board of Directors for all matters pertaining to procurement and purchasing.

The policies and procedures presented here are consistent with current applicable state and federal law. As necessary, the FCPS Board of Directors will revise this document as federal, state, county and city laws, as well as the California Education Code pertaining to charter schools, may change from time to time. Such changes, if approved by the FCPS Board, will be reflected by the corresponding minutes of such action, which will be included as an addendum to this document.

Procurement is a multistep process for acquiring the best possible goods and services at the lowest possible price. The FCPS 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, the FCPS 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.

II. SCOPE

These procedures apply to all purchases made by the organization or any of its schools. The procedures apply regardless of the source of the funds to be expended, including, but not restricted to:

- Tax money
- State and federal grants
- Donations

These procedures apply to all purchases of supplies, equipment, materials and services.

III. PROGRAM SECURITY

A. Personal Conduct

All FCPS employees understand and accept their fiduciary responsibility to protect the interest of the organization, to place the organization's interest above his/her own, and most importantly, to safeguard the organization's resources.

The Fenton Charter Public Schools will conduct all procurement transactions in compliance with the regulations and state laws included in *Title 2, Code of Federal Regulations* (2 CFR), sections 200.318(c)(1)(2), and 400.2(b)(1), and *California Government Code (GC)*, sections 1090 and 87100 et seq.

Employees, officers and agent of the Fenton Charter Public Schools who participate in the selection, award, or administration of a contract must read, sign and agree to abide by the Fenton Charter Public Schools Code of Conduct by September 1st of each year. (Attached at the end of this document.)

B. Ethics

Ethics is an overarching theme for the organization and its employees from the time preceding the initiation of the procurement process through the fulfillment of a contract. Procurements utilizing organization funds are either direct or indirect spending of public funds and subject to a higher level of scrutiny. Therefore, before, during and after the procurement process, all employees must be responsible, honest, prudent and avoid participating in any decision-making where there could be a conflict of interest or the appearance of a conflict.

No employee, officer, or agent of the Fenton Charter Public Schools may participate in the selection, award or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict 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.

All employees of the organization are subject to the provisions set forth in the FCPS Employee Handbook, which outlines the expectations of all employees and consequences of non-adherence. Employees, Board members and officers must also comply with the conflict of interest provisions set forth in the FCPS Bylaws, Charter and the FCPS Conflict of Interest Code Bridge Policy.

C. Gratuities, Favors, and Gifts Policy

The officers, employees, and agents of the Fenton Charter Public Schools may never solicit gratuities, favors, gifts or anything of monetary value from contractors or parties to subcontracts. However, officers, employees, and agents of FCPS may accept unsolicited gratuities, favors, and gifts when the value is nominal, which FCPS has established as \$25 or less per gift, not to exceed \$200 per vendor per school year.

The terms gratuities, favors, and gifts include discounts, entertainment, hospitality, loans, forbearance, services, training, transportation, lodging, and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

No gift or prize over the documented value of over \$25 can be accepted. If a gift or prize is received that is over the \$25 limit, the gift must be returned to the vendor with an explanation provided as follows: Thank you for your gift; however, the FCPS staff is not allowed to accept gratuities, favors, or gifts that exceed \$25 per gift or \$200 cumulatively per school year.

All gifts are to be documented and reported on the FCPS Gift Form, maintained by the FCPS Food Service Business Office. These forms are to be kept for a minimum of the current year plus three additional years.

D. Anti-Kickbacks

It is the organization's policy that all employees act with integrity and good judgment and recognize that accepting personal gifts from vendors may cause favoritism. No employee of the organization shall solicit or accept any personal favor, gratuity, offer of entertainment, or other personal gift directly or indirectly from a vendor who is doing or seeking to do business with the organization.

E. Incentives and Rebates

It is the organization's policy not to use incentives and rebates for personal benefit. In addition, it is the organization's policy to negotiate either quantity or trade discounts in lieu of accepting incentives or entering into rebate agreements with suppliers for all methods of purchase. FCPS employees are not to accept either incentives or offers for rebates from a supplier without the explicit advance written approval of the Executive Director or Board Chair. If a vendor proposes incentives or rebate agreements, the employee is to refer the vendor to the Executive Director who will review the conditions of the offer to determine if:

- It is reasonable;
- More favorable prices are available from other vendors; and
- Either the rebate or incentive value can be applied toward the purchase price.

F. Incentives

Incentives are deliberate enticements offered by a vendor to encourage a purchase. Incentives are tangible non-monetary benefits to the recipient and include any value-added goods and services offered at no charge. Examples include:

- Extra goods or services that were not solicited
- Gifts (such as free merchandise, event tickets, gift cards)
- Money for scholarships
- Cash
- Points that can be redeemed for merchandise

Employees may not accept incentives from vendors without the explicit, advance written approval from the Executive Director or Board Chair. Employees are prohibited from accepting incentives offered by a bidder for any agency staff member's personal use.

G. Rebates

Rebates are offers from the supplier either to return part of the cost of the order to the purchaser or to provide additional consideration or compensation to encourage the purchase of goods and/or services. Examples are:

- Cash or credit based on total purchases
- Value-added goods or services offered at a substantially reduced price
- Checks to either the purchaser or organization

If a manufacturer's rebate is offered on a purchase made by an employee, policy requires that the rebate check be made payable to the Fenton Charter Public Schools, and that the credit of the funds is returned to the same fund source as the expenditure. The rebate check is to be submitted to the FCPS Business Office. Failure to do so may result in investigation, criminal prosecution and disciplinary action.

Fenton Charter Public Schools
Business Office
8928 B Sunland Boulevard
Sun Valley, CA 91352
RE: Rebate

H. Goods and Services

Insofar as possible, goods and services purchased shall meet the needs of the person or department ordering them at the lowest price consistent with standard purchasing practices. Maintenance costs, replacement costs, and trade-in values shall be considered when determining the most economical purchase price. When price, fitness, and quality are equal, recycled products shall be preferred when procuring materials for use in schools and buildings.

I. Vendors

To ensure objective vendor performance and eliminate any unfair competitive advantage, vendors that develop or draft specifications, requirements, statements of work, invitations for bid (IFB), or requests for proposal (RFP) must be excluded from competing for the bid.

J. Required Staff Training

FCPS will require all staff with responsibility for school nutrition programs that work an average of at least 20 hours per week, other than school nutrition program directors and managers, complete annual training in areas applicable to their job. 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. The annual training must include, but is not limited to any specific topics identified by FNS, as needed, to address Program integrity or other critical issues. Training in procurement for staff shall begin with

watching the two YouTube videos: Procurement Guidance Part 1: Introduction to Procurement and Procurement Guidance: Off-Site Procurement Review Process.

Training progress throughout a school year will be monitored to ensure all responsible staff completes the required hours of training with the school year.

K. Disciplinary Action Policy

Penalties for violations of the FCPS Code of Conduct may include any or all of the following:

- Reprimand or other disciplinary action (e.g., suspension without pay) by FCPS board
- Dismissal by FCPS board
- Additional legal action necessary

L. Volunteer Policy

If an employee, officer, or agent of FCPS is found to be in a paid or volunteer capacity in any organization that does business with or receives funds from the FCPS, the employee, officer, or agent is subject to suspension or possible termination.

M. Organizational Conflict of Interest Policy

All Fenton schools under the umbrella of the Fenton Charter Public Schools and all Fenton employees shall abide by the FCPS Conflict of Interest Policy and all other provisions of the FCPS Employee Handbook.

N. California GC, Section 87100 et seq.

Requirements that each designated employee, other than those specified in California GC, Section 87200, file statements at times and under circumstances described in this section, disclosing reportable investments, business positions, interests in real property and income. The information disclosed with respect to reportable investments, interests in real property, and income shall be the same as the information required by sections 87206 and 87207. The first statement filed under a Conflict of Interest Code by a designated employee shall disclose any reportable investments, business positions, interests in real property, and income. An initial statement shall be filed by each designated employee within 30 days after the effective date of the Conflict of Interest Code, disclosing investments, business positions, and interests in real property held on the effective date of the Conflict of Interest Code and income received during the 12 months before the effective date of the Conflict of Interest Code.

IV. METHODS OF PROCUREMENT

A. Micropurchase Method (2 *CFR*, Section 200.320[a])

Micropurchases may be awarded without soliciting competitive quotations or comparing 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.

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

- * The aggregate value of a single transaction is \$10,000 or less per transaction
- * FCPS staff considers the price to be reasonable. Documentation (e.g., receipts and invoices) must be maintained for the prior three years plus the current Program Year (PY), or until the next California Department of Education (CDE) review, to document costs that are reasonable.

FCPS will distribute micro-purchases equitably among qualified suppliers to the extent practical and will ensure that purchases are made at a variety of stores and will not limit its purchases to only one store unless it is not practical due to distance of another store.

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

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

- **Step 1:** The FCPS Executive Director will develop and provide a clear and accurate description of the technical requirements of the goods or services to be procured from 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) when procuring food. 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 FCPS's policy.

Small Purchase Quotation forms and other forms of written quotes submitted by potential vendors will be retained by the FCPS Executive Director, 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, whichever is longer.

- **Step 3:** The FCPS Executive Director will evaluate the written quotes received based on stated evaluation criteria in order to determine responsiveness.
- **Step 4:** The FCPS Executive Director will evaluate the written responses and references received based on stated evaluation criteria to determine responsibility.

- **Step 5:** The FCPS Executive Director will award small purchases to the lowest priced responsible and responsive vendor.
- **Step 6:** The FCPS Executive Director 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).

The FCPS will check for any changes to the micropurchase and small purchase thresholds approved by the federal awarding agency, the U.S. Department of Agriculture (USDA).

C. 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 the FCPS. The FCPS Executive Director 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. Renewal options will be mutually agreed between FCPS and the awarded contractor.

The FCPS will complete the following steps when conducting formal procurements:

- **Step 1:** The FCPS Executive Director will describe how it performs a cost or price analysis (2 *CFR*, Section 200.323) 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, the FCPS Executive Director will make independent estimates before receiving bids or proposals to ensure the bids or proposals received are reasonable.
- **Step 2:** The FCPS Executive Director will develop a written solicitation, which will incorporate:
 - A clear and accurate description of the technical requirements for the goods or services to be procured per 2 *CFR*, sections 200.319(c)(1) and 200.320(c)(d).
 - The requirement to comply with the Buy American Provision per 7 *CFR*, sections 210.21(d) and 220.16(d)
 - All requirements that the offerers must fulfill and all other factors (IFBs and RFPs) and their relative importance (RFPs only) used in evaluating bids or proposals per 2 *CFR*, sections 200.319(c)(2) and 200.320(c)(d) to judge responsive and responsible firms
 - Instructions for responding vendors
 - The general terms and conditions of the contract

- **Step 3:** The FCPS purchasing manager will advertise the solicitation in print and on websites 30 days prior to the deadline for submission of bids and proposals.
- **Step 4:** The FCPS FSD and purchasing manager will open bids resulting from IFBs at the time and place prescribed in the solicitation. RFPs will be opened according to FCPS' determination.

The FCPS Executive Director and purchasing manager will evaluate offers from responding firms by using the evaluation criteria outlined in the solicitation for both IFBs and RFPs. If there is not a minimum of two respondents, the FCPS Executive Director 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 or accepting the single bid.

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. FCPS' Executive Director and purchasing manager must describe their written method used to conduct a technical evaluation of all proposals received, as required by 2 *CFR*, Section 200.320(d)(1) for RFPs only. The FCPS 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 5:** Responsible and Responsive Contractors (2 *CFR*, Section 200.318[h])

The FCPS 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. FCPS defines responsive as respondent conforms to all of FCPS' stated terms and conditions and defines responsible as respondent is capable of performing successfully under the terms and conditions of the contract.

- **Step 6:** The FCPS Executive Director 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.

For RFPs, the FCPS Executive Director will award the contract to the responsible and responsive respondent whose proposal is most advantageous to the FCPS, with price and other factors considered. 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 7:** The FCPS Executive Director will monitor the contract per 2 *CFR*, Section 200.318[b] by:

- Overseeing deliveries to ensure that the goods solicited for were received
- Periodic on-site visits to ensure services solicited are being satisfactorily performed

- 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
- Ensuring that discounts, rebates, and credits in cost reimbursable contracts are provided

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

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

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

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

While intergovernmental agreements can benefit the FCPS, the FCPS may only enter into an intergovernmental agreement with a local government (e.g., school district). FCPS may also join or piggyback onto a cooperative when that agreement was procured and awarded consistent with federal and state procurement regulations.

The FCPS purchasing manager and local counsel will carefully review the solicitation issued by a cooperative. The FCPS purchasing manager and local counsel will ensure the procurement of the contract, and the contract itself, complies with applicable federal, state, and local procurement rules. The FCPS purchasing manager and local counsel will confirm that the addition of their purchasing power to the procurement does not create a material change in scope or in services.

For cooperative purchasing, the FCPS purchasing manager must maintain a copy of the solicitation and contract, proof of advertising, and bid award documents (e.g., evaluation documentation) from the lead entity on file for the term of the contract, plus any extensions, and three additional school years.

For piggybacking, the FCPS purchasing manager must obtain prior written permission from the lead entity awarding the bid and the vendor who was 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) must be retained for the term of the contract plus

extensions and three additional school years.

A copy of all documents listed above will be made available during a procurement review.

V. BIDDING REQUIREMENTS AND PURCHASE LIMITS

The California Department of Education annually adjusts the dollar threshold that triggers procurements that shall be competitively bid by school districts. The threshold is applicable to supplies, equipment and general services. Each year, the Superintendent of Public Instruction (SSPI) publishes the annual increase for the bid threshold. As a charter management organization that operates charter schools, FCPS is not subject to these requirements for school districts.

The FCPS Board of Directors will also review professional services under consideration for purchase and determine final approval. FCPS elects to follow the procedures set forth below.

A. Bid Threshold

The California SSPI has adjusted the bid threshold limit for school districts to \$92,600 as of January 1, 2019 pursuant to Public contract Code 20651(d). While FCPS is not bound by the bid threshold limit, it will use the limit established by the SSPI, except as required by applicable law. The bid threshold amount will be adjusted yearly in accordance with the SSPI's inflation adjustment.

All procedures listed below will be followed for all procurements including, but not limited to, services for professional development, purchases of instructional materials and other related supplies and resources, and food services management contracts.

Awards shall be made to the lowest responsive and responsible bidder meeting the listed specifications (including product, price, delivery and terms).

The FCPS Board of Directors reserves the right to reject any and all bids or any part of any bid.

B. Publication of Notice for Bids

For the purpose of securing bids, the Board shall publish at least once a week for two weeks in some newspaper of general circulation, circulated in the county, a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place where bids will be opened.

All bid instructions and specifications will be clear and complete, setting forth all necessary conditions for competitive bidding and shall describe in detail the quality, delivery and service required. To assist FCPS in determining whether bidders are responsible, the Board may require prequalification procedures.

C. Opening and Acceptance of Bids

All advertised bids shall be opened in public at a prescribed time and place. Interested parties may receive prices and other information listed in the bid at the public opening.

After the bids have been opened and tabulated, they will be made available for interested persons to review. No bid document will be removed from the FCPS Business Office.

FCPS will avoid acquisition of unnecessary or duplicative items by considering consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

FCPS will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. This includes:

- Placing qualified small and minority businesses and women's business enterprises on 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;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

Any bid received after the time specified in the advertised notice will be returned unopened to the bidder.

D. Protest Procedures

If any bidder who submitted an offer has an objection to the award of the contract to the apparent bidder who submitted a responsive offer and is a responsible bidder with the lowest costs (in the case of a bid) or scored the greater number of points on a proposal, the objecting bidder shall notify the Executive Director of the FCPS within two (2) business days of the intent to dispute the awarded contract and furnish that protest, in writing, to the FCPS Business Office within five (5) business days of the date of the notification of an awarded contract.

The protest shall describe in detail the basis for the protest, and shall request a determination under this section. If a protest is filed in a timely fashion, the Executive Director will review the basis for the protest, and relevant facts under such terms and conditions, as the organization considers proper. Upon completion of the review, the Executive Director shall submit the findings and recommendations to the FCPS Board of Directors who shall then review the matter under such terms and conditions as deemed proper. Upon receipt of authority to act from the FCPS Board of Directors, the Executive Director will notify the bidder involved of the organization's decision. The decision shall be final and binding on the objecting bidder.

E. Buying American [Buy American Provision (7 CFR, Sections 210.21[d]) and 220.16[d]; U.S.]

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 [M/MA], 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 an M/MA 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.

In compliance with this policy, the FCPS Executive Director 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 the FCPS Executive Director will be ensured by:

- Including the Buy American Provision requirement in food 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 will 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 Memorandum 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 as determined by FCPS.

Note: Ingredients used to flavor, enhance, or prepare products (e.g., oil, yeast, spices, condiments, salad dressing) must also comply with the Buy American Provision requirement **only if** the first ingredient (or second after water) is one of the five components (breads/grains, fruits, vegetables, M/MA, and fluid milk) that contribute to a reimbursable meal. If the first ingredient in these products is not one of the five components that contribute to a reimbursable meal, the product does not have to comply with the Buy American Provision requirement. For example, catsup with tomato paste as the first ingredient must comply with the Buy American Provision requirement since tomato paste is creditable as a red/orange vegetable, **even though catsup is not a creditable item**. Mustard with distilled white vinegar as the first ingredient does not need to comply with the Buy American Provision requirement since vinegar is not a component that contributes to a reimbursable meal. Additionally, nonagricultural products such as paper, water, packaging, and labor do not need to comply with the Buy American Provision requirement.

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

Whenever possible, FCPS will *Buy American* domestic commodities and products, defined in Section 12(n) of the NSLA as an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially using agricultural

commodities produced in the U.S. Report language accompanying the legislation noted that “substantially means over 51% from American products.” Therefore, over 51% of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically. Thus, for foods that are unprocessed, agricultural commodities must be domestic, and for foods that are processed, they must be processed domestically using domestic agricultural food components that are comprised of over 51% domestically grown items, by weight or volume as determined by the SFA.

For products procured by FCPS for use in the Child Nutrition Programs using nonprofit food service account funds, the product’s food component is considered the agricultural commodity. FNS defines food component as one of the food groups, which comprises reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk. Any product processed by a winning vendor must contain over 51% of the product’s food component, by weight or volume, from U.S. origin. This definition of domestic product serves both the needs of schools and American agriculture.

Implementation of the Buy American provision will be done by including Buy American in documented procurement procedures, State agency prototypes documents, and all procurement solicitations and contracts; including domestic requirements in bid specifications; contract monitoring; and verifying cost and availability of domestic and non- domestic foods using data in the USDA Agricultural Marketing Service’s (AMS) weekly market report.

Using food products from local sources supports local farmers and provides healthy choices for children in the school meal programs while supporting the local economy. Requiring compliance with the Buy American provision also supports FCPS working with local, or small, minority, and women-owned businesses as required by Federal regulations (see 2 CFR 200.321).

FCPS will maximize its use of USDA Foods, which comply with Buy American requirements. USDA Foods are domestic, and purchasing from 100% domestic origin sources is a longstanding USDA policy based on Section 32 of the Agriculture Act of 1935 (P.L. 74-320 as amended; 7 U.S. Code 612c). However, processed end products that contain USDA Foods need to meet the 51% domestic requirement, by weight or volume.

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 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.

Before utilizing an exception, alternatives to purchasing non-domestic food products will be considered and FCPS will ask:

- Are there other domestic sources for this product?
- Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive (e.g. substitute domestic pears for non-domestic apples)?

- Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and/or availability change?
- Am I using third-party verification, such as through USDA AMS, to determine the cost and availability of domestic and nondomestic foods?

If FCPS is using one of the above exceptions, there is no requirement to request a waiver from the State agency or FNS in order to purchase a non-domestic product. FCPS will, however, keep documentation justifying its use of exception(s). Any exceptions to the Buy American requirement will be documented with reasons for not doing so and maintained for a minimum of three years.

FCPS 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, and the basis for the contract price. Records of all procurements will be kept for a minimum of three school years.

F. Small and Minority Businesses, Women’s Business Enterprises (2 *CFR*, Section 200.321)

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

- Placing qualified small and minority businesses and women’s business enterprises on 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
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
- 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.

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

The FCPS 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 the FCPS already has in place. The FCPS school Directors will provide the FCPS purchasing manager with documentation justifying that the purchase of all goods and services requested are required and not duplicative prior to conducting a procurement.

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

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

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

When a procurement has been properly conducted, and there is only one respondent, FCPS will evaluate the scope of work or services requested to determine whether they were too restrictive by contacting potential respondents who did not participate, and by reviewing the requested services for possible modification. FCPS will then resolicit. If, after the second solicitation, there is only one respondent, FCPS will move forward with that award.

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

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

- The FCPS will ensure that the description in the specification will always include a clause that an equivalent product is acceptable.
- A copy of the specified brand or code will be posted on the FCPS website by the purchasing manager so vendors can verify that the product they are bidding on is actually an equal.
- Vendors bidding an item as an equal product to the brand name specified will be required to provide the FCPS Directors with a product specification sheet and a sample case of the product for taste testing and verification by all FCPS Directors to ensure that the product is an equal product to the brand name specified.

J. Contractor Involvement (2 *CFR*, Section 200.319[a])

The FCPS 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. The FCPS business office 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 FCPS.

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

The FCPS will have written procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service being procured and will not contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service being procured and minimum essential characteristics and standards. A **brand name** or **equivalent** description may be used as a means to define the performance or other salient requirements of procurement. The specific desired features of the named brand must be clearly stated, along with all requirements, which the offerers must fulfill, and all other factors to be used in evaluating bids or proposals.

VI. EMERGENCY PURCHASES

An emergency is defined as a direct threat to life or safety of the public or protection of public facilities (not poor planning).

Emergency purchases shall be made following the school’s policies and procedures as closely as possible, while still assuring that the required supplies, services, or construction items are procured in time to address the emergency.

If an emergency purchase needs to be made, a school employee may request that the Executive Director or Director of the school approve issuance of an immediate check. Emergency purchases requiring an immediate check are to be signed out by the employee in the FCPS Business Office after the employee receives written approval from the Executive Director or Director of the school. The employee is responsible for using the check solely to purchase the items that were approved by their manager. The employee is responsible for bringing the receipts or purchase confirmation documents, along with any other supporting documents, to the Business Office immediately after the transaction has occurred.

VII. REQUIRED APPROVALS

For supplies, equipment, general services and professional services:

Dollar Threshold	Approvals
\$1 to \$10,000	Approving official: Director of School, IT Manager, or Facilities Manager
\$10,001 to \$25,000	Approving official: Executive Director
\$25,001 and above	Approving official: FCPS Board of Directors

VIII. RECEIVING PROCEDURES

A critical part of the purchasing program is receiving. Proper receiving is critical because it has direct correlation with nearly every other area of the program. It will also have a major effect on how the organization does business with vendors.

A. General Guidelines

1. Receiving will be completed by someone other than the employee who ordered/requested the item (e.g., purchases made by a Director will be received and reviewed by the Office Manager of the school, etc.).
2. Packing slips for the item received will be submitted to the FCPS Business Office after the order has been reviewed for accuracy and it has been verified that goods/services were received as expected.
3. Any problems will be immediately reported to the Business Office for review and intervention, as necessary, by the Executive Director.

B. Final Steps

Payment will be processed once packing slips have been received for goods, and confirmation has been received for services provided.

IX. ORDER STATUS

Purchase orders will be submitted to the FCPS Business Office after the order has been placed with the vendor. The purchase order form must have a clear description of the items ordered and must specify if the cost is shared with other FCPS schools.

It is the originator's responsibility to do follow-up for their orders. Schools must check their Purchase Orders weekly to track outstanding orders, and are responsible for follow-up calls as necessary. Calls and letters to follow up must be completed on a weekly basis for items not yet received. All information on the status of the requisition must be kept and saved as documentation of ordering and follow-up.

Purchase Orders will automatically be cancelled after ninety (90) days unless other arrangements have been made prior to submitting the final order.

X. PAYMENT PROCEDURES

It is the originator's responsibility to confirm receipt of all items or services ordered and received prior to any payment of invoice for vendors.

XI. MAINTENANCE OF RECORDS [2 CFR, Section 200.318(i)]

The FCPS will maintain records sufficient to detail the history of the 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.

XII. CONTRACT MANAGEMENT [2CFR, Section 200.318(b)]

The FCPS must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. FCPS will perform the following tasks to ensure compliance:

- Regular visits to each of the Fenton sites to observe use of facilities, interaction of staff and proper use of kitchens and implementing of health/safety standards;
- Monthly meetings with Food Services Management Company (FSMC) to review contract, and discuss any concerns;
- Periodic interviews with FSMC staff to review standards for food preparation, and development of menus;
- Discuss any concerns with food service program with site-based administrators.

XIII. CERTIFICATIONS (including, but not limited to 2 CFR, Appendix II)

The FCPS will require any successful respondent to provide proof of having and maintaining, during the life of any contract with the FCPS, Public Liability and Property Damage Insurance to protect themselves and the FCPS 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 the FCPS enters into.

The FCPS will not enter into a contract with any company or individual that has been debarred or suspended. The FCPS 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 that are awarded contracts are required to submit a completed Debarment and Suspension Certificate, and Disclosure of Lobbying Activities. These forms must be completed prior to commencement of work.

XIV. CONTINUING EDUCATION/TRAINING STANDARDS [7 CFR, sections 210.30(b)(3)]

The FCPS operates the School Nutrition Programs (SNP) and must ensure that all SNP directors (7 CFR, Section 210.30[3]), SNP managers (7 CFR, Section 210.30[c][1–5]), and staff (7 CFR, Section 210.30[d][1–6]) with responsibility for SNP, complete their required annual trainings. The annual training should include, but is not limited to, the following topics as applicable: training in procurement procedures, and any other specific topics identified by USDA Food and Nutrition Service as needed to address program integrity or other critical issues. Annual training requirements for SNP managers, directors, and staff are summarized under 7 CFR, Section 210.30[e][1–2].

XV. CONTACT INFORMATION

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

Purchasing Manager: Stacey Manzo, (818) 962-3630, extension 5102

Food Service Director: Irene Sumida (818) 962-3630, extension 5113

FENTON CHARTER PUBLIC SCHOOLS

CODE OF CONDUCT AGREEMENT

The Fenton Charter Public Schools (FCPS) will conduct all procurement transactions in compliance with the regulations and state laws included in Title 2, *Code of Federal Regulations (2 CFR)*, sections 200.318(c)(1)(2), and 400.2(b)(1), and *California Government Code (GC)*, sections 1090 and 87100 et seq.

Employees, officers, and agents of FCPS who participate in the selection, award, or administration of a contract must read, sign, and agree to abide by the FCPS Code of Conduct annually, by September 1st of each year.

FCPS Conflict of Interest Policy:

No employee, officer, or agent of FCPS may participate in the selection, award, or administration of a contract 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.

FCPS Gratuities, Favors, and Gifts Policy:

The officers, employees, and agents of FCSP may never solicit gratuities, favors, gifts or anything of monetary value from contractors or parties to subcontracts. However, officers, employees, and agents of FCPS may accept unsolicited gratuities, favors, and gifts when the value is nominal, which FCPS has established as \$25 or less per gift, not to exceed \$200 per vendor per school year.

The terms gratuities, favors, and gifts include discounts, entertainment, hospitality, loans, forbearance, services, training, transportation, lodging, and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

No gift or prize over the documented value of over \$25 can be accepted. If a gift or prize is received that is over the \$25 limit, the gift must be returned to the vendor with an explanation provided as follows: Thank you for your gift; however, the FCPS staff is not allowed to accept gratuities, favors, or gifts that exceed \$25 per gift or \$200 cumulatively per school year.

All gifts are to be documented and reported on the FCPS Gift Form, maintained by the FCPS business office. These forms are to be kept for a minimum of the current year plus three additional years.

FCPS Disciplinary Action Policy:

Penalties for violations of the FCPS Code of Conduct may include any or all of the following:

- Reprimand or other disciplinary action (e.g., suspension without pay) by FCPS board
- Dismissal by the FCPS board
- Additional legal action necessary

FCPS Volunteer Policy:

If an employee, officer, or agent of FCPS is found to be in a paid or volunteer capacity in any organization that does business with or receives funds from FCPS the employee, officer, or agent is subject to suspension or possible termination.

FCPS Organizational Conflict of Interest Policy:

All schools under the umbrella of the Fenton Charter Public Schools and all Fenton employees shall abide by the FCPS Conflict of Interest Policy and all other provisions of the FCPS Employee Handbook.

California GC, Section 87100 et seq.:

Requirements that each designated employee, other than those specified in California GC, Section 87200, file statements at times and under circumstances described in this section, disclosing reportable investments, business positions, interests in real property and income. The information disclosed with respect to reportable investments, interests in real property, and income shall be the same as the information required by sections 87206 and 87207. The first statement filed under a Conflict of Interest Code by a designated employee shall disclose any reportable investments, business positions, interests in real property, and income. An initial statement shall be filed by each designated employee within 30 days after the effective date of the Conflict of Interest Code, disclosing investments, business positions, and interests in real property held on the effective date of the Conflict of Interest Code and income received during the 12 months before the effective date of the Conflict of Interest Code.

- If applicable, **Fenton Charter Public Schools** employees who make or influence governmental decisions are to submit a Statement of Economic Interest, Form 700, annually.

By signing below annually, I acknowledge that I fully understand and agree to abide by the policies of the Fenton Charter Public Schools Code of Conduct.

Officer, Agent, or Employee Name

Title

Date