

Procurement Reviews

Presented by
Emily Phillips
Staff Services Manager I
California Department of Education



What You Will Learn Today

- Why Procurement is in the spotlight
- Procurement basics
- The three phases of procurement reviews
- Procurement resources



Why Focus On Procurement?



Procurement Oversight



- 2013 – Office of Inspector General audit
- 2014 – USDA begins development of Local Agency Procurement Tool
- 2015 – USDA procurement trainings for state agencies



Procurement Oversight

- 2015 – Policy memo on procurement reviews
- 2016 – Procurement Tool Pilot
- 2016 – Draft Tool for use in SY 2016-17
- 2016 – Buy American Oversight



Procurement Basics



Written Procurement Procedures

- “The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.”

2 Code of Federal Regulations (CFR), Section 200.318 (a)



Importance of Procurement Procedures

- Ensures purchases made are in compliance with federal, state, and local rules
- Provides purchasing staff with step-by-step guide on proper procurements = decrease in unallowable transactions

IMPORTANT



Understanding Procurement Procedures

- Document containing specific information and processes for procurement transactions
- Update as procedures change
- Unique to each district
- Documented
- Follow the procedures



Written Code of Conduct

- “The non-Federal entity 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. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.”

2 CFR Section 200.318 (c)(1)

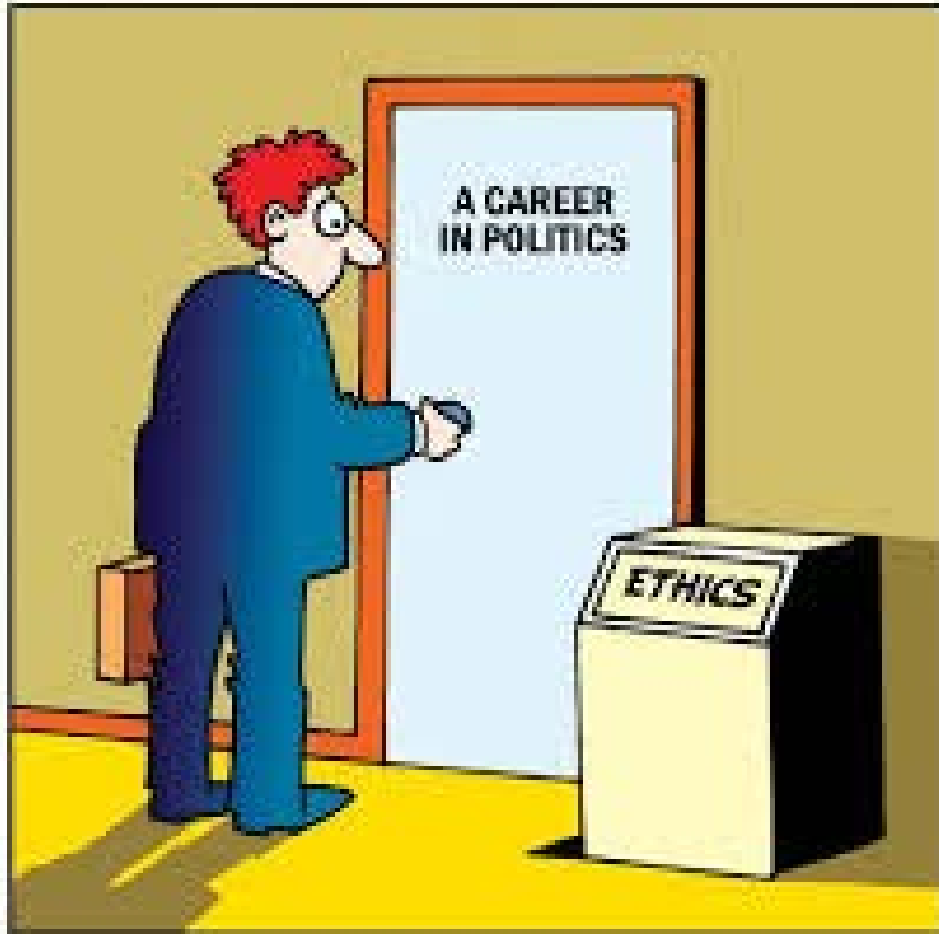


Importance of Written Code of Conduct

- Protects employees from engaging in unethical and unallowable behavior
- Provides for disciplinary actions to be applied for violations
- Protects district's reputation



Code of Conduct Applies to...



- All employees, officers, or agents engaged in the selection, award and administration of contracts

Conflict of Interest

- A “conflict of interest would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or any organization which employs or is about to employ any of the parties indicated, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.”

2 CFR, Section 200.318 (c)(1)



Disciplinary Actions

“The standards of conduct must provide for disciplinary actions to be applied for violations of such standards”

2 CFR, Section 200.318(c)(1)

Examples of disciplinary actions can include:

- Verbal warning or written reprimand
- Fines
- Suspension or termination



Soliciting Gifts is Prohibited

“The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or **anything of monetary value** from contractors or parties of subcontracts.”

2 CFR, Section 200.318(c)(1)



Gratuities, Favors or Gifts

“Non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.”

2 CFR, Section 200.318 (c)(1)

*Always consult your local counsel



Organizational Conflicts of Interest

- “The non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization”

- 2 CFR Section 200.318 (c)(2)



Next Steps

Does my agency have written procurement procedures and a written code of conduct?

- If no, get started!
- CDE will be asking about these documents during your procurement review!



Remember...



- Train staff on the written procurement procedures and the written code of conduct
- Get approval by the governing board, if applicable



Procurement Standards



Duplication of Goods/Services

- “The non-Federal entity’s procedures must avoid acquisition of unnecessary or duplicative items.”



2 CFR, Section 200.318 (d)



Common or Shared Goods and Services

- “The non-Federal entity 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.”

2 CFR, Section 200.318 (e)



Surplus Property

- “The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs”



2 CFR, Section 200.318 (f)



Responsible

- “The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.”

2 CFR, Section 200.318 (h)



BE RESPONSIBLE



Records

- “The non-Federal entity must maintain records sufficient to detail the history of procurement.”
 - Including (but not limited to):
 - Rationale for procurement method
 - Selection of contract type
 - Contractor selection or rejection
 - Basis for the contract price

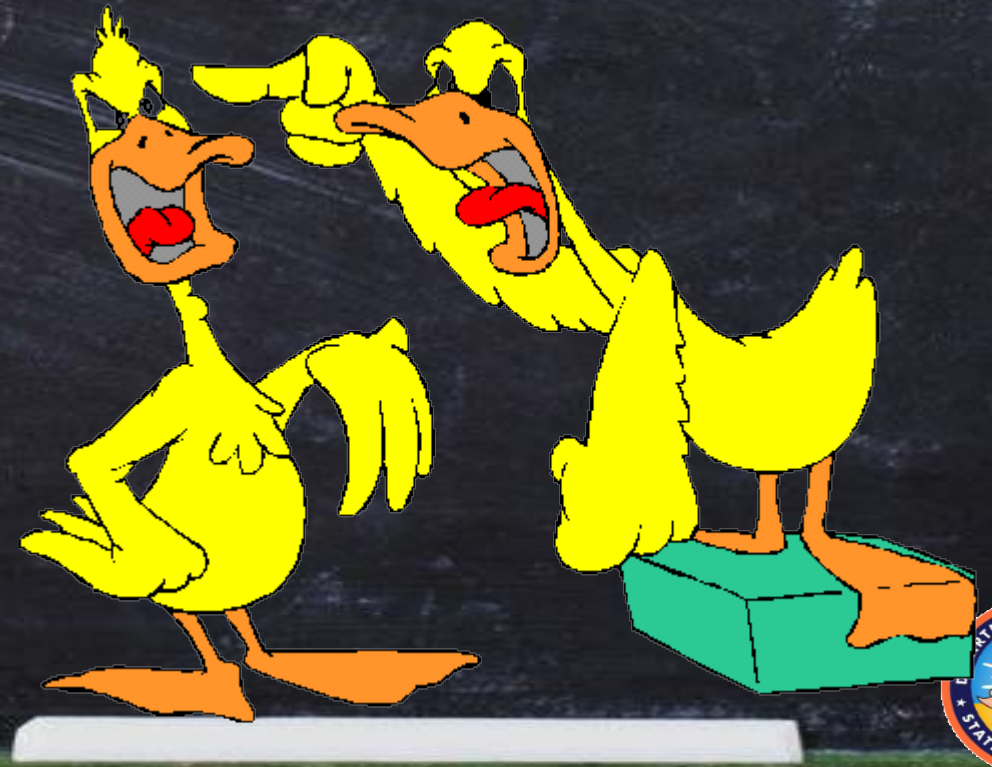
2 CFR, Section 200.318 (i)



Contractual and Administrative Issues

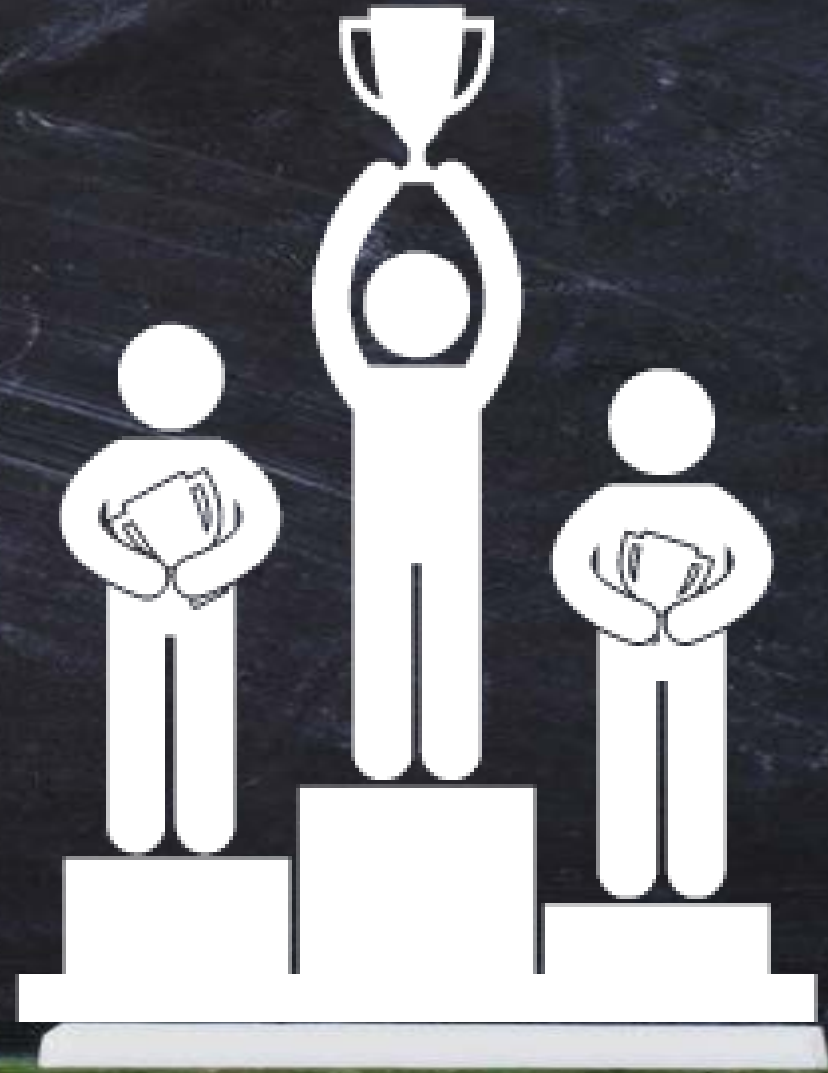
- “The non-Federal entity **alone must be responsible**, for the settlement of all contractual and administrative issues arising out of procurements.”
 - Including (but not limited to):
 - Source evaluation
 - Protests
 - Disputes
 - Claims

2 CFR, Section 200.318 (k)



Competition

- “All procurement transactions must be conducted in a manner providing full and open competition”



Contractor Involvement

Contractors **must be excluded** from competing for a procurement if they develop or draft:

- Specifications
- Requirements
- Statements of work
- IFBs or RFPs



2 CFR, Section 200.319(a)



Restricting Competition

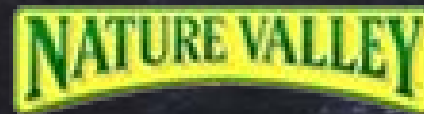
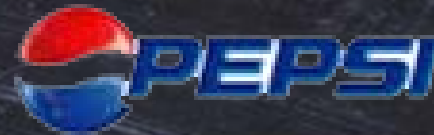
- “Some of the situations considered to be restrictive of competition include but are not limited to:
 - Placing unreasonable requirements on firms in order for them to qualify to do business
 - Requiring unnecessary experience or excessive bonding
 - Noncompetitive pricing practices between firms
 - Noncompetitive contracts to consultants
 - Organizational conflicts of interest

2 CFR, Section 200.319 (a)(1-5)



Brand Name or Equivalent

- “Specifying only a “brand name” product instead of allowing “an equal” product to be offered”



Buy American
Provision



Buy American Provision

The National School Lunch Act requires SFAs to purchase to the maximum extent possible domestic commodity or product that is produced in the United States (U.S.)

and a food product that is processed in the U.S. using substantial agricultural commodities that are produced in the U.S.



Definitions

- **Domestic products:** produced and processed in the U.S. substantially using agricultural commodities that are produced in the U.S.
- **Substantial:** Over 51 percent of the final processed product consists of agricultural commodities produced in the U.S.



Exceptions to Buy American

- Product not produced or manufactured in the U.S. in sufficient and reasonable quantities of satisfactory quality
- Competitive bids reveal the cost of the U.S. product are significantly higher than nondomestic products.



Compliance Tips

- Include steps to ensure compliance
- Include Buy American clause in:
 - Specifications
 - Solicitations
 - Purchase orders
 - Other procurement documents



Compliance Tips

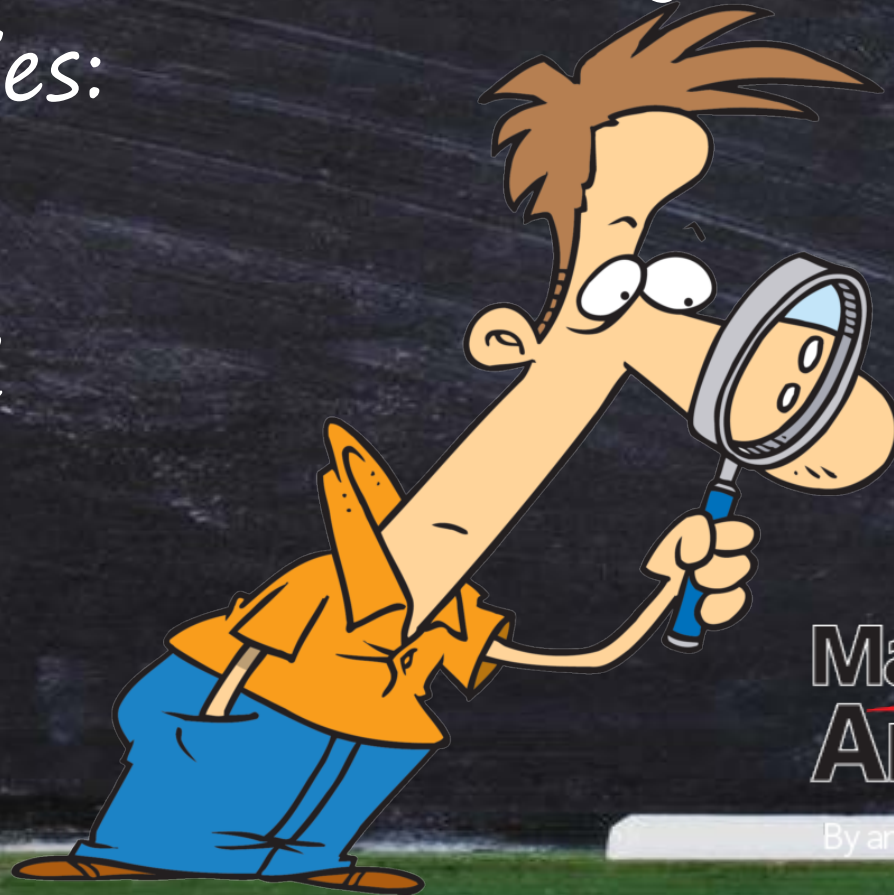
Monitor contractor performance to ensure compliance

- Require supplier to certify origin of product
- Examine product packaging to identify country of origin
- Ask supplier for specific information about the percentage of U.S. content in food product



On-site Administrative Review (AR)

- Visual inspection of agricultural commodity labels in on-site and off-site storage facilities
- Four categories:
 - Dry
 - Canned
 - Refrigerated
 - Frozen



Made in
America

By an American Owned Corporation



Procurement Reviews

School Years 2015-16 through 2017-18



2015-16 Accomplishments

- Trainings
- Local agency procurement review
- Web page
- Resources



2016-17 Procurement Review



- **Off-site review**
 - Assess whether school food authority (SFA) has the two required written procurement documents
- **On-site review**
 - Assess whether SFA adhering to Buy American Provision by physical inspection of off and on-site storage



USDA Local Agency Procurement Review Tool

- Procurement Review Tool – Excel Spreadsheet
- More information for SY 2017-18 Procurement Reviews will be forthcoming

USDA United States Department of Agriculture
Food and Nutrition Service



USDA Tool Categories and Focus

- *Transactions selected*
- *Five review categories*
- *Targeted focus = risky transactions*



Review Categories

1. Micro-purchase
2. Small (informal) procurement method
3. Formal procurement method
4. Food service management companies
5. Processor transactions



Targeted Focus

1. Third party involvement
2. One response to solicitation
3. Higher dollar value
4. Review priorities
5. Value credit methods



Corrective Actions

- Deadline for the corrective actions is established
- A follow-up of the corrective action occurs
- Noncompliance may require other action



The Next Steps

- Program operator will receive an exit interview after the review
- Review will be followed by a letter of results
- Findings and corrective actions will be addressed
- Accolades for procurement transactions may be the result



Summary

- Procurement transactions are in the spotlight
- Reviews will happen in 3 years
- We are currently in year 2 of procurement reviews
- Year 3 will be a thorough review of procurement
- Records of your transaction are important



Remember

Procurement reviews are an opportunity to learn and improve!!



Procurement Resources

CDE Web pages

- Procurement in Child Nutrition Programs
<http://www.cde.ca.gov/ls/nu/pr/index.asp>
- Procurement in School Nutrition Programs
<http://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp>
- NSD Professional Development for CNP Personnel
<http://www.cde.ca.gov/ls/nu/pd-main.asp>



How to Contact Us?

- E-mail address: SFSCONTRACTS@cde.ca.gov
- SFSCU by phone at 916-319-0636, or toll-free at 800-952-5609, option 2
- To locate your assigned Contract Specialist for your county on the Web, go to the CDE Procurement Web page at <http://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp>, Resources tab.



Professional Standards Crediting Information

- Key Area: Operations (code 2000)
 - Key Topic: Purchasing/Procurement (2400)
 - Learning Objectives: Solicit, receive and evaluate bids for award in compliance with Federal, State and local regulations (2420)
- Total Instructional Hours: 1.0



Thank you!



This institution is an equal opportunity provider.

