

FOOD PROCUREMENT (REGULATION)

In accordance with the policy of the board of education, the following regulation shall govern the procurement of food products for this school district.

The method of procurement used will be determined by the aggregate amount of goods, equipment, and services purchased. "Aggregate" is defined as any purchase or group of purchases, e.g., milk and milk products, bread, canned and staple foods, fresh and frozen meats, etc., capable of being secured from a single source on a given date or during a purchase period. The procurement methods that will be used by this school district to purchase the goods, equipment, and services required by the program are as follows:

1. Small Purchase Procedures will be used to purchase goods, equipment, and services where the aggregate cost is less than \$100,000, and fresh produce regardless of aggregate amount. Such procedures shall be utilized on an annual basis by the school district.

When small purchase procedures are used, the following conditions, stipulations, and terms must be met:

- A. The goods, equipment, or services to be purchased must be adequately and consistently described for each prospective supplier so that each one can provide price quotes on the same merchandise or service;
 - B. Written or verbal "requests for quotations" for the goods, equipment, or services to be purchased may be made;
 - C. An adequate number of qualified sources must be contacted to provide such quotes. NOTE: The term "adequate number" is determined by local market conditions;
 - D. Responses to "requests for quotations" can be in either written form or verbal with a written confirmation;
 - E. Cost plus a percentage of cost method of purchasing is prohibited;
 - F. Price quotation responses will be retained by this school district with other program documentation and records for a period of five years after the end of the fiscal year to which they pertain.
2. Competitive Sealed Bids (Formal Advertising) will be used to purchase goods, equipment, and services where the aggregate cost is \$100,000 or more, and when the selection of a successful supplier can appropriately be made principally on the basis of price. NOTE: Breaking up purchases with the intent of circumventing formal advertising procedures is contrary to federal procurement regulations. Any change in the district's normal purchasing practices, which results in the aggregate amount of purchases becoming less than \$100,000, must be documented for review and audit purposes.

When competitive sealed bids are used, the following conditions, stipulations, and terms must be met:

- A. The invitation to bid will be publicly advertised;
- B. Bids will be solicited from an adequate number of known suppliers in sufficient time prior to the date set for the opening of the bids;

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- C. The invitations for bid will clearly define the goods, equipment, or services needed in order for the bidders to be able to properly respond. This includes product specifications and general purchasing conditions;
 - D. All bids will be opened publicly at the time and place stated in the invitations for bid;
 - E. A firm, fixed-price contract award will be made by written notice to the responsible bidder whose bid is lowest, assuming the bid conforms to the requirements in the invitation for bid;
 - F. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs (for equipment), if applicable, will be considered in determining which bid is lowest;
 - G. Payment discounts will only be used to determine the low bid when prior experience of the school district indicates that such discounts are generally taken;
 - H. Any and all bids may be rejected when there are sound documented reasons that the best interest of the program will not be served by the potential suppliers;
 - I. Cost plus a percentage of cost method of contracting is prohibited;
 - J. All bids received must be documented and such documentation shall be maintained by this school district with other program records for five years after the end of the fiscal year to which they pertain.
3. Competitive Negotiation can be used when competitive sealed bids are determined to be inappropriate, infeasible, or impossible. This method of procurement is commonly used for the acquisition of professional services. The document used to solicit bids is commonly referred to as a request for proposal.

When competitive negotiation is used, the following conditions, stipulations, and terms must be met:

- A. Proposals will be solicited from an adequate number (at a minimum, two) of qualified sources to permit reasonable competition;
- B. The request for proposal will be publicized and reasonable requests by other sources to compete must be honored to the maximum extent possible;
- C. The request for proposal will identify all significant evaluation factors, including price or cost where required, and their relative importance;
- D. This school district will provide a mechanism: (1) for technical evaluation of the proposals received; (2) to determine which responsible bidders will be contacted for further written and verbal discussions; and (3) for selection of contract award;
- E. The contract will be awarded to the responsible bidder whose proposal is most advantageous to the school district when price or other factors are considered;
- F. Cost plus a percentage of cost method of contracting is prohibited;

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- G. All requests for proposals received must be documented and such documentation shall be retained by the school district with other program records for five years after the end of the fiscal year to which they pertain.
4. Noncompetitive Negotiation is procurement through solicitation of a proposal from only one source and can only be used when the procurement is not feasible under small purchase procedures, competitive sealed bids (formal advertising), or competitive negotiation. The decision to use noncompetitive negotiation must be justified in writing and be available for audit and review. As with the methods of procurement, such documentation must be maintained with other program records for five years after the end of the fiscal year to which they pertain, and cost plus a percentage of cost method of contracting is prohibited.

Circumstances under which a procurement may be made by noncompetitive negotiations are limited to the following:

- A. The merchandise or service is available only from a single source;
- B. A public emergency exists and the urgency for the requirement will not permit the delay involved with competitive sealed bids (formal advertising) or competitive negotiation;
- C. After solicitation from a number of sources, competition is found to be lacking.
5. The SFA will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:
- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- B. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises.
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises.
- E. Using the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce.
- F. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

6. Buy American Provision
Section 104(d) amended Section 12(n) of the National School Lunch Act (NSLA) (42 U.S.1760) to require SFAs participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in the United States *to purchase for those programs, to the maximum extent practicable, domestic United States Department of Agriculture (USDA) Foods or products.* For purposes of this provision, the term *domestic food commodity or product* means agricultural USDA Foods produced in the United States, including Guam, American Samoa, the Virgin Islands, Puerto Rico, and the Northern Mariana Islands, and food products processed in the United States SUBSTANTIALLY using agricultural USDA Foods that are produced in the United States. The Conference Report accompanying Public Law 105-336 makes it clear that the term SUBSTANTIALLY means that over 51 percent of the processed food comes from American-produced products. (SD-24-2016)

7. Micro-Purchasing: If the amount of purchases for items is less than \$3,500 and less than the SFA/Sponsors' small purchase threshold, the following procedure will be used.
 - A. Purchases will not be separated into 2 or more purchases to meet or be below the \$3,500 threshold.
 - B. The price quotes will not be required. Competition is not required.
 - C. When practicable, micro-purchases will be distributed equitably among qualified suppliers.
 - D. Documentation of purchases will be kept and maintained for 3 years plus the current year.
 - E. The (Title of Person) will be responsible for documentation of purchase.

Note: Federal threshold of \$2,000 is applicable in the case of acquisitions for construction subject to the Davis-Bacon Act