

## **PURCHASING (PROCUREMENT)**

### **for FEDERAL AWARDS and USDA CHILD NUTRITION PROGRAMS (FOOD SERVICE)**

Administrative Procedure DJ-Ra

#### **Federal Awards (Including USDA Child Nutrition Programs)**

#### **History**

In December of 2013 the U.S. Office Management and Budget (OMB) issued “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (Uniform Guidance). Uniform Guidance made important updates to specific areas related to federal grants with procurement being one of the areas with changes. Part of the change requires that every non-federal entity receiving federal awards must have documented procurement procedures that reflect federal law, Uniform Guidance standards, and any state regulations.

The U.S. Department of Agriculture (USDA) Food and Nutrition Service Child Nutrition Programs (CNP) must meet all procurement standards set forth in the OMB Uniform Guidance as well as 7 CFR Parts 210 (National School Lunch Program), 215 (Special Milk Program), 220 (School Breakfast Program), 225 (Summer Food Service Program), 226 (Child and Adult Care Food Program), 245 (Eligibility for Free and Reduced Meals), and 250 (Donation of Foods) as applicable.

#### **Purpose**

The purpose of this policy is to ensure that goods, services and construction projects are purchased and bid for the performance of a federal grant are obtained in a cost-effective manner and in compliance with federal regulations.

Reoccurring professional services, unless federally funded, do not fall under this policy and will be handled on a case by case basis depending on cost, service, and efficiency of multi-year contracts.

#### **Scope**

This policy applies to elected officials, employees and any sub-contractors or engineers who are authorized to initiate and/or approve purchases paid with federal grant funds.

#### **Responsibility**

The District is responsible for determining whether a purchase is allowable under the terms of the federal grant and will ensure purchases are in accordance with this policy.

#### **Code of Conduct**

As representatives of the District, elected officials, employees and sub-contractors or engineers are expected to conduct themselves in a professional and ethical manner, maintaining high

Promulgated **July 1, 2020**

Page **1** of **12**

DJ-Ra

standards of integrity and the use of good judgment.

The following Code of Conduct shall govern the performance, behavior and actions of the District including elected officials, employees, sub-contractors, engineers, volunteers, or agents who are engaged in any aspect of procurement, including – but not limited to – purchasing goods and services; awarding contracts and grants; or the administration and supervision of contracts.

### **Code of Conduct**

No employee, elected official, sub-contractor, engineer, volunteer or any agent of the District shall participate in the selection, award or administration of a bid or contract supported by federal funds if a conflict of interest is real or apparent to a reasonable person.

Conflicts of interest may arise when any employee, elected official, sub-contractor, engineer, volunteer or any agent of the District has a financial, family or any other beneficial interest in the vendor firm selected or considered for an award.

No employee, elected official, sub-contractor, engineer, volunteer or any agent of the District shall do business with, award contracts to, or show favoritism toward a member of his/her immediate family, spouse's family or to any company, vendor or concern who either employs or has any relationship to a family member; or award a contract or bid which violates the intent of federal, state and local procurement laws and policies established to maximize free and open competition among qualified vendors.

The District employees, elected officials, sub-contractors, engineers, volunteers or any agents shall neither solicit nor accept gratuities, gifts, consulting fees, trips, favors or anything having a monetary value from a vendor, potential vendor, or from the family or employees of a vendor, potential vendor or bidder; or from any party to a sub-agreement or ancillary contract.

### **Overview**

To promote compliance with federal regulations, the District requires some measure of cost/price analysis when making purchases under federal grants. All vendor bids and quotations must be evaluated on the basis of product quality, technical compliance with specifications, total cost, and the vendor's acceptance of the terms and conditions. The purchase of unnecessary items must be avoided.

Before beginning vendor selection, buyers should be sure that they have a clear and accurate description of the requirements for the material, product, or service being acquired so that a fair and equitable comparison of price and/or cost can be made. Whenever possible, three price quotes should be obtained for all goods and services. Identical bid specifications and/or request for proposals will be provided to all potential vendors.

## Federal Dollar Thresholds VS More Restrictive District/State Thresholds

<b>Federal Dollar Thresholds</b>	<b>District Dollar Threshold (effective 7/1/2020)</b>	<b>Procurement Process</b>
<p>If purchase is: Less than or equal to \$10,000</p> <p>The OMB defines this as a <b>“Micro Purchase”</b></p>	<p>If purchase is: Less than or equal to <b>\$25,000</b></p> <p>(Less Restrictive than Federal Threshold - <b>use <u>Federal Dollar Threshold</u></b>)</p>	<p>Non-Formal Non-Competitive Non-Written</p>
<p>If purchase: Exceeds Micro Purchase Threshold AND Less than or equal to \$250,000</p> <p>The OMB defines this as <b>“Simplified Acquisition”</b> (previously “Small Purchase”)</p>	<p>If purchase is: Greater than <b>\$25,000</b> <u>and</u> Less than <b>\$50,000*</b></p> <p>(More Restrictive than Federal Threshold and <b><u>District Dollar Threshold</u></b> <b>must be used</b>)</p>	<p>Non-Formal Competitive Written</p>
<p>If purchase: Exceeds Simplified Acquisition Threshold (\$250,000)</p> <p>The OMB defines this as a <b>“Exceeds Simplified Acquisition Threshold”</b> <i>The District will call it “Large Purchase”</i></p>	<p>If purchase is: Greater than or equal to <b>50,000*</b></p> <p>(See exception below for school buildings)**</p> <p>(More Restrictive than Federal Threshold and <b><u>District Dollar Threshold</u></b> <b>must be used</b>)</p>	<p>Formal Competitive Bid</p>

*Changes made to District Dollar Threshold in Policy DJ Purchasing (Procurement) should also be reflected in this table. In the event the District Dollar Thresholds differ in this administrative procedure, precedence falls to the District Dollar Thresholds in Policy DJ.*

\*Defined by Wyoming State Statute 21-3-110(1)(viii) and becomes the ‘more restrictive threshold’ when administering federal grants.

\*\*When any school building is to be built \$50,000 or more or when any repairs, additions or improvements costing \$50,000 or more is to be made to any school building, facility or other school property, the Board shall obtain competitive bids and publish a call for bids in a newspaper of general circulation in the state at least once each week for two consecutive weeks.

## **Special Considerations for Federal Awards (including USDA Child Nutrition Programs):**

### **Access to Records / Personnel**

The District will allow access to all records per 2 CRF 200.336 requested by the federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity (e.g., Wyoming Department of Education) or any of their authorized representatives in order to make audits, examinations, excerpts and transcripts.

The right also includes timely and reasonable access to the District's personnel for purpose of interview and discussion related to such documents.

### **Affirmative Action Preference**

An effort to purchase goods and services from qualified vendors who qualify as a small, disadvantaged, minority or women-owned business must be made and documented with preference given to the extent practical and economically feasible.

In addition to state-level programs, there are federal programs that also provide direct procurement assistance to minority owned-businesses. The [U.S. Small Business Administration's 8a](#), [Small Disadvantaged Business](#) and [Women-Owned Small Business](#) programs, as well as the [Department of Transportation's disadvantaged business enterprise \(DBE\) development program](#), all involve set-asides and certification for federally-funded government procurement.

The U.S. Small Business Administration has a district office in Casper, Wyoming. Their website is <https://www.sba.gov/offices/district/wy/casper>.

### **Brand Name or Equal**

When it is impractical or uneconomical to make clear and accurate descriptions of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other requirements. The specific features of the named brand, which must be met by the suppliers, shall be clearly stated per 2 CRF 200.310(c)(1).

Restricting procurement to a brand name or a specific product is not permitted. However, situations do arise when the District has a compelling need or reason to purchase a brand specific item. The District would then need to document all reasons for this requirement but must still maximize competition even in the brand specific procurements.

### **Bonding Requirements**

Bonding may be required for construction, facility improvement contracts, and/or subcontracts exceeding the Simplified Acquisition Threshold to ensure that the Federal interest in the procurement is adequately Federal interest in the procurement is adequately protected.

Minimum requirements:

- a) A bid guarantee equal to 5% of the bid price to ensure that post bid selection that the successful bidder will enter into a binding agreement for the work.
- b) A performance bond to secure fulfillment of the contractor's obligations for 100% of the contract price
- c) A 100% payment bond to assure payment as required by law of all persons supplying labor and materials in performance of work specified in the contract.

### **Buy American (applies only to USDA Child Nutrition Programs)**

The District is required to purchase, to the maximum extent possible, domestic products for use in meals served in the National School Lunch/Breakfast programs. The “Buy American” requirement in 7 CFR Part 210.21(d) specified that the District should purchase domestically produced food and food products.

A “domestic commodity or product” is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S.

The Buy American provision also applies to entities that purchase on the behalf the District.

If the District is unable to purchase a domestic item, documentation must be kept, justifying the exemptions(s) and maintained for review by the state agency (WDE).

The District will include a “Buy American” clause in all product specifications, bid solicitations, requests for proposals, purchase orders, and any other type of procurement documents issued.

### **Contract Administration**

The District will maintain a contract administration system which will ensure that contractors perform in accordance with the terms, conditions, and specifications of their contract or purchase orders. The District Business Manager will review all aspects of any contractor bid documents, expenditures, processes, and procedural aspects to ensure compliance with all federal, state, local and district regulations.

The District’s contract administration system will address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms. Appropriate sanctions and/or penalties will be included.

Additionally, contracts greater than \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

Contracts made under a federal award (such as with funding from the USDA Child Nutrition Programs) will also contain all applicable federal provisions as referenced under *Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards*.

## **Cost and Price Analysis**

Some form of cost or price analysis must be made, and documented in the procurement files in every procurement action. Price analysis is used when it is a lump sum fixed price. Cost analysis may be used where it is a cost-reimbursement purchase or where there is only one prospective bidder and no comparable goods or services are available to be compared.

- a) Price analysis involves a comparison of marketplace prices
- b) Cost analysis involves an examination of all the elements used in calculating a contract's total estimated cost. It requires the review and evaluation of each element of cost to determine whether it is reasonable, pertinent to that grant program and that the grant program allows it.

## **Credit Card / Charge Card Use**

The Uniform Guidance does not limit charge card purchases to a particular threshold amount, however the District's internal controls still govern the procedures to follow for federal purchasing (micro-purchase, simplified acquisition, single source, etc.) See Administrative Procedure DJ-Rb "Credit Cards".

## **Debarment and Suspension**

Attempts must be made and documented to verify that a vendor is not debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs or activities by checking the Federal Excluded Parties List System at [www.Sam.gov](http://www.Sam.gov). Verification will occur prior to a vendor being chosen and before a contract has been offered.

## **Discounts, Rebates and Credits**

All contracts and procurements are net of all applicable discounts, rebates and credits. All contractors will maintain records and source documents in support of all costs, discounts, rebates and credits.

## **Documentation / Records Retention**

The District shall retain all required records for at least three (3) years after final payments and all pending matters have been closed and completed. The District will adhere to all 2 CFR 200.333 record retention requirements.

Documentation to be retained will include all solicitation documents, responses, evaluation records, and contracts. These records should detail the history of any procurements and should also include, but are not limited to, the following:

- Rationale for the method of procurement used
- Selection of contract type
- Contractor selection or rejections
- Basis for the contract price

### **Full and Open Competition**

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this administrative procedure.

Situations considered to be restrictive of competition include, but are not limited to:

- a) Placing unreasonable requirement on contractors in order to disqualify them from being competitive
- b) Requiring unnecessary experience and/or excessive bonding
- c) Noncompetitive pricing practices between contractors or between affiliated companies
- d) Conflict of interest
- e) Specifying only a “brand name” product instead of allowing “an equal” product to be offered
- f) Describing unduly performance or other relevant requirements of the procurement
- g) Any arbitrary action in the procurement process
- h) The use of state or local geographical preferences in the evaluation of bids, or proposals (except for when it is allowed in USDA Child Nutrition Programs)

### **Geographic Preference (applies only to USDA Child Nutrition Programs)**

Procurements must be conducted in a manner that prohibits the use of geographical preferences (advantage based on location) in the evaluation of proposals. Exceptions do exist for where federal law requires or encourages preference such as “Farm to School”.

### **Green Procurement Preference**

Does the vendor supply products and services that conserve natural resources, are energy

Promulgated **July 1, 2020**

Page **8** of **12**

DJ-Ra

efficient and protect the environment? Vendors should be given preference, to the extent practical and economically feasible, for such products.

### **No Vendor Involvement in Writing Bid/Proposal Specifications**

The District contracts will not be awarded to any potential vendors who write any of the bid specifications, the solicitation documents, or any of the contract language.

### **Non-Discrimination Clause**

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, audiotope, 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](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 requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) 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](mailto:program.intake@usda.gov).

This District (FCSD25) is an equal opportunity employer.

### **Non-Performance**

The District retains the right to terminate any contract for cause or convenience.

## **Responsive and Responsible Bidders**

Purchases and contract awards must be made only to responsive and responsible bidders.

***Responsive*** means that the bidder and their offer meet the requirement of the procurement.

***Responsible*** means that the bidder has the means to execute the procurement – they have the ability to provide the goods and/or services required in accordance with the applicable specifications and contract terms.

## **Solid Waste Disposal Act**

The District will make a reasonable effort for procuring items designated in the Environmental Protection Agency guidelines of 40 Code of Federal Regulations (C.F.R.), Part 247 which requires:

- a) Procurements must contain the highest percentage of recovered materials practical, consistent with maintaining satisfactory levels of competition, when the purchase price exceed \$10,000 or the value of the quantity procured in preceding fiscal year exceeded \$10,000;
- b) Procuring solid waste services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for recovered materials.

## **Termination of Contract**

Contracts greater than \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

## **Vendor Selection**

Does the vendor provide the best mix of quality, service and price for the specified need? Federal regulations require that the lowest price have priority unless quality, service or delivery time takes priority and that need must be documented.

## **Methods of Procurement**

The District's Policy DJ Purchasing (Procurement) and Administrative Procedure DJ-R Purchasing (Procurement) for All Funds outline the use of non-formal or formal procurement processes and their required documentation that meet the requirements of the Uniform guidance.

## **Additional Notes for Special Non-Competitive Proposals Procurement**

Sometimes a project or purchase is not competitively bid and are characterized as sole or single source transactions.

### **Sole Source:**

No other vendor capable of fully meeting the requirements exists.

A sole source procurement must have prior approval by the Wyoming Department of Education (WDE).

Federal rules allow for a sole source when only one supplier is available nationally. The State Agency (WDE) can authorize the SFA (the District) to conduct a noncompetitive negotiation with that one supplier, if noncompetitive negotiation is allowed under applicable State and local rules. *This is a rare occurrence.*

### **Single Source:**

Alternative vendors exist in the competitive market, but the buyer chooses to solicit a bid from only one particular vendor because of technical requirements (precision, reliability) or past performance by other vendors (poor service, availability of parts).

### **Emergency:**

Circumstances arise where it is unreasonable to obtain competitive bids due to an emergency situation.

### **Not Required by Awarding Agency:**

The awarding agency has expressly authorized a noncompetitive process, or after solicitation of a number of sources.

### **Non-Response to Solicitations:**

After solicitation of a number of sources, competition is deemed inadequate and may result in the sole respondent being awarded the project

Documentation as to why sealed bid (IFB) or competitive proposals (RFP) procurement was not used must be completed and filed with the procurement file.

## **Bid Protest Procedures**

Any bidder, person, or entity may file a protest with the District relating to a bid, contractual or administrative issue. The protest shall specify the reasons and facts upon which the protest is based and shall be filed, in writing, to the /Business Manager no later than three (3) business days after the date of the bid award or notice of unsuccessful bid or for contract or administration protests, within three (3) days of the incident giving rise to the protest.

The District will investigate the basis for the protest and analyze all facts. The District will notify the bidder/contractor of the evidence found as a result of the investigation, and afford the bidder/contractor an opportunity to rebut such evidence, and permit the bidder/contractor to present any evidence that the bid and/or contract award, or the administration of the contract, was done in an unfair or biased manner.

If necessary, the District will then hold an informal hearing before the School Board, which will include the Superintendent and Business Manager, who will present information in response to the protest.

The District will issue a written decision within fifteen (15) business days following receipt of the protest, unless factors beyond the District's reasonable control prevent such a resolution, in which event such decision will be issued as expeditiously as circumstances reasonably permit.

The decision will state the reasons for the action taken by the District. A copy of this decision will be furnished to the protestor and any other parties affected.

## **Exceptions**

The governing body must approve any exceptions to this policy in writing.