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## **PROCUREMENT (RELATED TO FEDERAL USDA FUNDS) AND WRITTEN STANDARDS OF CONDUCT REGULATION**

The District will adhere to the following policy regulation for any procurement related to federal USDA funds.

### **Procurement Methods:**

- A. Formal Procurement Method: The Formal Procurement Method must be used when the dollar amount of the procurement event has an estimated value equal to or greater than the federal small purchase threshold. However, if the local or state purchase threshold is less than the federal procurement, the District will use the local or state purchase threshold because it is more restrictive. The formal procurement method may be used for *any* procurement event.
1. Two procurement types, Competitive Sealed Bidding or Competitive Proposals will be used in the solicitation process.
  2. Both procurement types are designed to provide free and open competition and ensure that Federal USDA funds—when used to purchase products and/or services—result in the best and most responsive product.
  3. The District will award a contract to the most responsive and responsible vendor whose proposal is most advantageous to the program, with price and other factors considered.
  4. District Personnel will use the following procedures to develop the procurement specifications.
    - a. Develop descriptions for all items.
    - b. Develop instructions for providing service or product.
    - c. Advertise in the official district newspaper.
    - d. Mail descriptions, instructions, and response documents to potential bidders.
    - e. The Superintendent, Business Manager and Food Service Manager will open and tabulate responses in a public meeting.
    - f. Submit recommendation to the school board for award of contract.
- B. Informal Procurement Method: The Informal Procurement Method is used when the dollar amount of the procurement has an estimated value less than the Federal USDA small purchase threshold. However if the local or state purchase threshold is less than federal threshold, the District will use the local or state purchase threshold because it is more restrictive.
1. The Informal Procurement Method requires:
    - a) The use of a solicitation (written document)
    - b) Competition – minimum of three price quotes
    - c) Must be free of non-competitive practices

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- d) Procurement process must be documented
- 2. The award will go to the most responsive (able to meet the requirements of the solicitation) and responsible (able and willing to furnish the goods or services solicited) vendor with the lowest price.
- 3. The District will monitor invoices, product quality, product quantity, prices, terms and conditions of compliance and will keep track of returns and exchanges throughout the term of the bid.
- 4. District Personnel will use the following procedures to develop the procurement specifications.
  - a. Develop descriptions for all items.
  - b. Develop instructions for providing service or product.
  - c. Obtain price quotes from a minimum of three suppliers.
  - d. Prepare a price quote documentation sheet, and indicate the supplier who was awarded the quote and the length of time the price is set.
  - e. The Food Service Manager will open and tabulate responses.
  - f. Submit documentation sheet for approval to superintendent.

C. Micro-purchase Method

- 1. A **micro-purchase** is an acquisition of products or services where the amount of the transaction does not exceed \$3,500. However, if the local purchase threshold amount is less than \$3,500, the District would use the local or purchase threshold because it is more restrictive.
- 2. Purchases within the micro-purchase threshold can be awarded without soliciting competitive price quotations as long as the price is reasonable.
- 3. To the extent practicable, purchases must be distributed equitably among qualified suppliers. Price comparisons are not required, but the price(s) should be considered reasonable.
- 4. To verify the reasonableness of a price, the District could compare previous purchases, have personal knowledge of the item being purchased, and/or compare to similar items being purchased.
- 5. Documentation must be kept for all purchases regardless of the procurement method used, including micro-purchases.
- 6. If it is necessary to make an emergency purchase to continue uninterrupted service, the purchase shall be made using noncompetitive negotiation to establish contract terms and price. A log of all such purchases shall be maintained and reviewed monthly by the superintendent or business manager. The log of emergency purchases shall show:
  - a. Item name
  - b. Dollar amount
  - c. Vendor
  - d. Reason for emergency

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D. Bid Specifications: The District contracts will not be awarded to any potential vendor who writes any of the bid specifications, the solicitation documents, or any of the contract language. Identical bid specifications and/or request for proposals will be provided to all potential vendors. This must include all important information such as delivery schedules, quantities, product specifications, and purchase conditions.

E. Ordering/Receiving/Management Process: All purchasing will be conducted as follows.

1. The food service manager will requisition food, supplies, and equipment for site use. The requisition could be electronic, a preprinted form, a standing order, or any method that leads to an efficient ordering system.
2. The food service manager will place orders based on prices that are established through an approved purchase method.
3. The food service manager or a food service assistant who has received appropriate receiving training will receive products.
4. The site receiver is only responsible for checking the brand, if appropriate, and the number of cases. The food service manager and the business manager will check the price on the invoice against the order price.
5. The Food Service Manager will develop and interpret specifications/descriptions.
6. The Food Service Manager will approve brand or quality substitutions prior to delivery.
7. The Food Service Manager or Business Manager shall issue request for prices. The food service manager or business manager shall receive response to request for price.
8. The Food Service Manager and Business Manager shall evaluate response to request for prices.
9. All records shall be maintained for a period of three years plus the current year.

**Geographic Preference:** No Geographic Preference (advantage based on location) is allowed with federal USDA funds except for documented Farm to School (Farm to Plate) efforts. Therefore, as part of Farm to School the District may choose to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products only.

**Small, Minority and Women's Business Enterprises and Labor Surplus Firms:** (a) The District will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) 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; (4)

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Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) 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 (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**Buy American:** The District will adhere to "Buy American" for the food service program. Therefore the District is required to purchase, to the maximum extent possible, domestic products for use for any procurement related to federal USDA funds. However, exceptions are allowed when (1) food preferences can only be met with foreign goods or (2) insufficient quantity and/or quality is available in the USA or (3) domestic cost is significantly higher.

**Standards of Conduct:** No employee, officer or agent of the District shall participate in the selection, award or administration of a contract supported by federal USDA funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer or agent, any member of his/her immediate family, his/her business partner or associate, or an organization which employs or is about to employ any of the persons referred to herein, has a financial or other interest in the firm selected for an award. The officers, employees and agents of the District shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or organizations doing business with the District.

- A. Conflicts of interest arise when a school district employee:
  - 1. has a financial or other interest in the firm selected for the award;
  - 2. is an employee, officer, or agent of the firm selected for the award;
  - 3. has a member of the immediate family who is an employee, officer, or agent of the firm selected for the award;
  - 4. has a financial interest in the firm selected for the award;
  - 5. is about to be employed by the firm selected for the award; or
  - 6. has a member of the immediate family who is about to be employed by the firm selected for award.
  
- B. An exception may be made for the receipt of an unsolicited item of nominal value if approved by the Superintendent or his/her designee. The District would like all employees to behave with the utmost integrity and never be self-serving, be fair in all aspects of the procurement process, be alert to conflicts of interest, and avoid any compromising situations.
  
- C. Any employee who violates the terms of this policy shall be subject to disciplinary action, up to and including termination from employment. Non-employee agents or

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representatives may also be sanctioned and removed from their position as agent or representative for the District for violation of this policy.

**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 contracts or purchase orders.

In any instance in which a contract or purchase order has been breached or violated by the contractor, the District will reserve the right to collect any and all damages that may arise from the breach of contract either through mediation or through an appropriate court proceeding, all of which will be retained by the School District. In addition, the District reserves the right to administer appropriate sanctions, including barring the contractor from bidding on future contracts. In appropriate cases, the contract may include liquidated damages for failure to timely and/or appropriately comply with the contract provisions.

All contracts will address termination for cause and for convenience and include the manner by which it will be affected and the basis for settlement.

**Discounts, Rebates, Credits:** The District will verify that all contracts and procurements are net of all applicable discounts, rebates, and credits. All vendors will maintain records and source documents in support of all costs, discounts, rebates, and credits.

**Bid Protest Procedure:** Any vendor who desires to dispute the award of a bid pursuant to this policy shall, within fifteen (15) days after award of the bid, give notice of their protest.

The notice shall state, in detail, the basis of the claimant's bid protest and the resolution requested. The bid protest shall be provided to the Superintendent. The Superintendent shall investigate the claim and issue a written decision within fifteen (15) days after receipt. If the claimant is not satisfied with the decision of the Superintendent, the claimant may appeal the decision to the School Board. The notice of appeal shall be filed with the School Board at the office of the Superintendent of Schools within fifteen (15) days after issuance of the decision being appealed from.

The appeal shall state the basis of the appeal and provide to the board the original bid protest, together with a copy of the decision being appealed from. The specific grounds for the appeal shall be stated in the appeal and shall not include additional claims or information not provided with the original bid protest.

The School Board, at the next regular board meeting following the receipt of the appeal, shall either hear the appeal or set a time to consider the appeal. The Board may, in its discretion, render a decision based upon the information and records before them or, in the board's

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discretion, may request the claimant and a representative of the School District to present information pertaining to the bid protest.

In the event the board chooses to hear from the bid protester and a representative of the School District, each will be entitled to present or have someone on their behalf present their position to the board. Thereafter, the board shall render its decision either at that meeting or at the next regular board meeting.

**Debarment and Suspension of a Vendor:** For good and/or service contracts to be paid with Federal USDA funds, the District shall check the Federal Excluded Parties List System and document that the vendor has not been debarred or suspended. Verification will occur prior to a vendor being chosen and before a contract has been offered.

**Public Access to Procurement Information:** Procurement information shall be a public record to the extent provided in the State open records law. All bids/offers shall be taken under advisement. Between the time an IFB/RFP is opened and awarded it may be viewed by any company or individual who entered a response to the proposed intent to purchase.

After acceptance, procurement information is available to the general public except as noted below.

- A. Any supplier providing information as a part of a proposal or offer shall stamp each page which they consider proprietary information, "not for public release."
- B. Should the school district receive a request to release this marked information the supplier shall be notified within 24 hours and given 10 working days to obtain a court order to stop release.
- C. In 10 working days the party requesting the information shall be provided a copy of the court order or instructions on when to review the information.

References:

Adopted: March 9, 2017

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