



**PROCUREMENT PLAN
FOR CHILD NUTRTION PROGRAMS**

This procurement plan will be implemented on 9/5/2023 from that date forward until amended.

| | | |
|--------------|-----------|------|
| Printed Name | Principal | Date |
|--------------|-----------|------|

| | |
|-----------|-----------|
| Signature | Principal |
|-----------|-----------|

| | | |
|--------------|------------------|------|
| Printed Name | Business Manager | Date |
|--------------|------------------|------|

| | |
|-----------|------------------|
| Signature | Business Manager |
|-----------|------------------|

SECTION I- Procurement Plan Requirements

The plan for Immaculate Conception School is to procure items for use in the Child Nutrition Programs and is as follows:

Immaculate Conception School procedures seek to avoid acquisition of unnecessary or duplicative items. Consideration is given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made to determine the most economical approach.

The procurement plan provides for free and open competition, transparency in transactions, comparability, and documentation of all procurement activities.

- A. Regardless of procurement method, the following factors will be determined regarding the allowability of costs:
- I. Be necessary and reasonable for proper and efficient administration of the program(s)
 - II. Be allocable to federal awards applicable to the administration of the program(s)
 - III. Be authorized and not prohibited under state and local law.
- B. Purchasing will be conducted at the most restrictive procurement threshold:

| | Federal Procurement Threshold | SFA/LEA Procurement Threshold |
|--|--------------------------------------|--------------------------------------|
| Micro-Purchase | Less than \$10,000 | Less than \$10,000 |
| Small Purchase | Less than \$250,000 | Less than \$250,000 |
| Formal Purchase | Greater than \$250,000 | Greater than \$250,000 |
| Formal Purchase/Services and Supplies | Greater than \$25,000 | Greater than \$25,000 |
| Capital Equipment/Not on Pre-Approved List (ADD LINK FOR PREAPPROVAL) | Greater than \$5,000 | Greater than \$5,000 |

C. **Purchasing Equipment**

If the amount of purchases for equipment is greater than \$5,000 (or the SFA/LEA's local capitalization threshold) the following procedure will be used.

1. Determine if the equipment purchase is allowable and if the equipment is on the South Dakota Child Nutrition Program Approved Equipment List.
 - a. <https://doe.sd.gov/cans/documents/CNPEquipment-Memo2.pdf>
 - b. If the equipment is less than the \$5,000 or the SFA/LEA local capitalization threshold (whichever is lower) **and** on the South Dakota Child Nutrition Program Approved Equipment List, the SFA may purchase the equipment and **does not** need further approval. The price quotes will receive appropriate confidentiality before award.

2. If the equipment is over the \$5,000 (or the SFA/LEA's capitalization threshold), OR is **not** on the Approved Equipment List, Child and Adult Nutrition Services (CANS) must approve the equipment before it can be purchased. **SFA/LEA will contact CANS for approval.**
3. SFA shall keep documentation of approval and all documentation related to the procurement of capital equipment.

Capital Equipment is defined by Federal regulations as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the SFA/LEA for financial statement purposes, or \$5,000.00.

D. **Training**

All staff conducting purchasing will be trained on the procurement procedures.

E. **Document Retention**

All purchasing records will be maintained no less than three years plus the current year.

F. **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 NSLP and SBP in the United States to purchase for those programs, to the maximum extent practicable, domestic USDA Foods or products. For purposes of this provision, the term domestic food commodity or product means an agricultural commodity 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. For products procured by SFAs for use in the Child Nutrition Programs, the food component of the product is the agricultural commodity. FNS defines food component as one of the food groups which comprise reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk.

All solicitations that involve the purchasing of a food component shall include a requirement that the SFA purchase domestic commodities to the maximum extent practicable and shall include procedures for limited exceptions. The SFA shall include following language in solicitations:

The Immaculate Conception School participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. 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. as provided in 7 CFR 210.21(d).

Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved upon request. To be considered for an alternative or exception, the request must be submitted in writing to a designated official, prior to the delivery of the product to the school. The request must include the:

1. Alternative substitute(s) that are domestic and meet the required specifications:
 - (a) Price of the domestic food alternative substitute(s); and
 - (b) Availability of the domestic alternative substitute(s) in relation to the quantity ordered.

2. Reason for exception: limited/lack of availability or price (include price):
 - (a) Price of the domestic food product; and
 - (b) Price of the non-domestic product that meets the require specification of the domestic product.

G. Minority and Women's Businesses

The Immaculate Conception School 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:

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. 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.

H. Code of Conduct / Conflict of Interest

Immaculate Conception School **Food Service Department**

Regulations: 2 CFR Part 200.318, formerly 7 CFR Part 3016.36(b)(3), State Procurement Code and Regulations, and Immaculate Conception School District Department of Purchasing.

Procedures: The Immaculate Conception School seeks to conduct all procurement procedures:

- in compliance with stated regulations; and
- to prohibit conflicts of interest and actions of employees engaged in the selection, award and administration of contracts.

No employee, officer, or agent of Immaculate Conception School may participate in the selection, award, or administration of a contract supported by a Federal, State, or local award 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.

The officers, employees, and agents of Immaculate Conception School entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Immaculate Conception School sets the standard for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. Value threshold for Immaculate Conception School is set at: \$ 0.

Disciplinary actions to be applied for violations of such standards by officers, employees, or agents of Immaculate Conception School are as follows: ***Action will be taken at the discretion of the School Administration.***

I. **Taste testing, sample procedures**

Sample products are not provided for taste testing from the vendors at this time.

J. **Emergency Planning**

1. If it is necessary to make a one-time emergency procurement to continue service or obtain goods, the purchase shall be made, and a log of all such purchases shall be maintained by the SFA. The following emergency procedures shall be followed. All emergency procurements shall be approved by Becca Briggs, Principal. At a minimum, the following emergency procurement procedures shall be documented:
 - item name
 - dollar amount
 - vendor
 - reason for emergency
2. If the emergency purchasing need requires a contract, all books, records and other documents relative to the award of the contract must be retained for three (3) years (or until a procurement audit has been completed) after final payment. Specifically, the SFA/Sponsor shall maintain, at a minimum, the following documents:
 - Written rationale for award cost or price;
 - A copy of the original solicitation;
 - The bidding and negotiation history and working papers;
 - The basis for contractor selection;
 - Approval from the State agency to support a lack of competition when competitive bids or offers are not obtained;
 - The terms and conditions of the contract;
 - Any changes to the contract and negotiation history;
 - Billing and payment records;
 - A history of any contractor claims;
 - A history of any contractor breaches

K. **Geographic Preference**

The use of statutorily or administratively imposed in-state or local geographic preferences for procurements under USDA entitlement programs is prohibited, except for unprocessed locally grown or locally raised agricultural products. The Food, Conservation, and Energy Act of 2008 (Public Law 110- 246, Section 4302) amended Section 9(j) of the NSLA to allow institutions receiving funds through CNP to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When geographic preference is used, an SFA must still get quotes from several suppliers when procuring unprocessed locally grown or locally raised agricultural products so that competitors have an opportunity to compete for the bid.

***See resources for more information on local purchasing and geographic preference.**

L. **Protest Procedures**

Required protest procedures are as follows:

Immaculate Conception School will have protest procedures to handle and resolve disputes relating to their procurements. These procedures will be and shall in all instances disclose information regarding the protest

to the awarding agency. A protester must exhaust all administrative remedies with the SFA before pursuing a protest with a federal agency. Reviews of protests by the federal agency will be limited to:

- I. Violations of federal law or regulations and the standard of 2 CFR 200.318(k) (violations of state or local law will be under the jurisdiction of state or local authorities).
- II. Violations of the SFA's protest procedures for failure to review a complaint or protest. Protests received by the federal agency other than those specified previously will be referred to the SFA

The SFA shall include the following written protest procedures in all solicitations:

Any bidder, person, or entity may file a bid protest with the Immaculate Conception School. The protest shall specify the reasons and facts upon which the protest is based and shall be filed, in writing, to the Immaculate Conception School no later than **10** business days after the date of the bid award or notice of unsuccessful bid. Immaculate Conception School will investigate the basis for the bid protest and analyze all facts. The Immaculate Conception School will notify the Bidder whose Bid is the subject of the bid protest of evidence found as a result of the investigation and afford the Bidder an opportunity to rebut such evidence and permit the Bidder to present any evidence that the bid and/or contract award was done in an unfair or biased manner. Any protest of the proposed award must be submitted in writing to Becca Briggs, Principal, 109 3rd St SE Watertown, SD 57201

The Immaculate Conception School will issue a written decision within **15** business days following receipt of the Bid protest, unless factors beyond the Immaculate Conception School 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 Immaculate Conception School. A copy of this decision will be furnished to the protestor and any other parties affected.

The procedure and time limits set forth in this policy are mandatory and are the bidder's sole and exclusive remedy in the event of a bid protest. The bidder's failure to fully comply with these procedures shall constitute a waiver of any right to further pursue the bid protest.

M. Monitor the Agreement or Contract

Immaculate Conception School will monitor the Contracts and Agreements.

SECTION II – MICROPURCHASING

***Name and Title of those responsible for Micro-Purchase Procedures:** Amanda Mueller, Food Services Director

If the amount of purchases for items is less than \$10,000 *or less than the SFA's micro-purchase threshold*, the following procedure will be used.

Select one:

- ☒ Purchases below \$10,000
- ☐ Purchases below \$_____ (*LEA threshold if it is below \$10,000, must use most restrictive*)

1. The aggregate dollar value of each transaction shall be less than the micro-purchase threshold above. Purchases will not be separated into 2 or more purchases to meet or be below the threshold.
2. Purchase prices shall be reasonable.
3. Micro-purchases shall be spread equitably among qualified suppliers to the extent practicable. If the SFA is unable to spread purchases equitably, it shall document the reason why (example: the next grocery store is located 50 miles away from the school LEA).

Micro - Purchase Procedures Table

| Vendor & Category (List what vendor is being used and what product, services or supplies will be purchased) | Justification (Justification for using this vendor) | Duration/ Frequency (Weekly, Monthly, Yearly, Per Purchase) |
|---|---|---|
| Small Town Grocery Store – Fresh Produce | We can buy what we need, when we need it and product is fresh. Can't order small enough quantities from vendors who deliver. Only grocery store in town. Next closest is 31 miles away. | Weekly |
| Amazon-Janitorial supplies | Emergency supply purchases | As needed |
| Amanda Mueller-Special dietary needs purchased from Local Grocery Stores | Emergency food/supply purchases | As needed |
| Cash-Wa Distributing | Food/Supply purchases | As needed |
| Catholic Diocese of Sioux Falls | Background checks | As needed |
| Commercial Kitchen | Emergency or minor repairs, service and parts | As needed |
| County Fair Foods | Food/supply purchases | As needed |
| Earthgrains Baking Co. Inc. | Food/supply purchases | As needed |
| Eachen Inc | Emergency or minor repairs, service and parts | As needed |
| First Premier Bank | Bank service fees | Monthly |
| Marcos Pizza | Food purchases | Monthly |
| Nordica Warehouses Inc | Food Storage | Monthly |
| School Nutrition Assn | Food Purchases | Monthly |
| SD Dept of Ed CANS | Food Purchases | Monthly |
| Wheel Express | Shipping of Freight | Monthly |

SECTION III – SMALL PURCHASE PROCUREMENT

***Name and Title of those responsible for Small Purchase Procedures:** Amanda Mueller, Food Services Director

If the amount of purchases for items less than \$250,000 *or the SFA's small purchase threshold*, Small Purchase Procedures must be followed. Quotes documented from an adequate number of qualified sources will be required.

Select one:

- ☒ Perishable purchases below \$250,000, purchases below \$25,000 for services or supplies.
- ☐ Purchases below _____ (LEA threshold if it is below \$250,000 for perishables, or \$25,000 for services and supplies must use most restrictive)
1. Written specifications will be prepared and given to a minimum of two vendors.
 2. is received at the documented price.
 3. Any time an accepted item is not available, the person stated in Section III will select the acceptable alternate. Full documentation will be made available as to the selection of the acceptable item. Substituted items will not be made at the vendor's discretion.

***See Appendix B for a Small Purchase Checklist and Appendix C for an Informal Purchasing Log.**

Informal Purchase Procedures Table

[illegible]

SECTION IV – FORMAL PROCUREMENT

***Name and Title of those responsible for Formal Procurement Procedures:** Becca Briggs, Principal

Select one or more as applicable:

- ☒ Perishable purchases over \$250,000 or services and supplies over \$25,000.
- ☐ Purchases over \$_____ (LEA threshold if it is above \$250,000 for perishables or \$25,000 for services and supplies, must use most restrictive)

1. If the amount of purchases is above the LEA's threshold, or a Food Service Management Contract, formal procurement procedures will be used as required by 2 CFR Part 200.318-326.
 - a. When a formal procurement method is required, the following **COMPETITIVE SEALED BID or an Invitation for Bid (IFB) or COMPETITIVE PROPOSAL in the form of a Request for Proposal (RFP)** procedures will apply: (It is highly suggested by USDA to allow 45 days for IFB & 60 days for RFP from the time the information is given to vendors until the time of bid opening. It should not be any less than 30 days)
 - b. An announcement of an **Invitation for Bid (IFB) or a Request for Proposal (RFP)** will be placed in the Immaculate Conception Parish Bulletin and Facebook to publicize the intent to purchase needed items. The advertisement for bids/proposals or legal notice will be run for 30 days.

The public advertisement will include:

- A general description of items to be purchased.
 - The deadline for submission of questions and the date written responses will be provided including an agenda to bid specifications, terms and conditions as needed.
 - A date of pre-bid meeting, if applicable, and if attendance is a requirement for bid award.
 - A deadline for submission of sealed bids or proposals, and address of location where complete specifications and bid forms may be obtained.
- c. Any person who develops written specifications or descriptions for procurements will be **prohibited** from submitting bids or proposals for such products or services.
 - d. The IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the solicitation document:
 - LEA information
 - Description of the goods and services to be procured
 - Contract period
 - SFA/Sponsor is responsible for all contracts awarded (statement).
 - Date, time, and location of bid/ proposal opening. (IFB requires a public opening)
 - How a vendor will be informed of bid/proposal acceptance or rejection.
 - The terms and conditions which bidder/proposer must fulfill.
 - Statement assuring efforts will be made to involve minority and small business.
 - Protest procedures
 - Technical requirements, specifications, and forecasted quantities

- Proposal withdrawal procedures
- Options for “piggybacking” or adding new products if applicable
- Type of contract to be awarded to the School Nutrition Program Federal funding will be Fixed Price only.
- Criteria for award and method for evaluating cost
- All required federal contract provisions (as applicable) outlined in 2CFR200 Appendix II.

e. **Invitation for Bid**

In awarding an Invitation for Bid (IFB) a firm fixed price is awarded to the bidder that is most responsive and responsible and is the lowest in price. An IFB must result in a fixed fee/firm fixed price contract.

f. **Request for Proposals**

In awarding a competitive negotiation (RFP) a set of award criteria in the form of a weighted evaluation sheet will be provided to each bidder in the initial bid document materials. **Price** alone is not the sole basis for award but remains the **primary** consideration when awarding a contract. Price does not have to be 51% of points but must be the highest weighted criteria.

g. **Evaluation Criteria the SFA can use to award an RFP**

SFA may tailor evaluation criteria to each procurement as appropriate.

(Price must be weighted with the highest points and award must equal 100 points)

| Criteria | Weight (points) |
|--|-----------------|
| Cost | 20 |
| Experience, References | 14 |
| Financial, Condition/Stability, Business Practices | 14 |
| Personnel Management | 10 |
| Service Capability Plan | 9 |
| Accounting & Reporting Systems | 9 |
| Promotion of the School Food Service Program | 9 |
| Innovation | 8 |
| Involvement of Students, Staff and Patrons | 7 |
| | |
| 100 points TOTAL | |

- h. Specifications and estimated quantities of products and services prepared by SFA/Sponsor and provided to potential contractors desiring to submit bids/proposals for the products or services requested.
- i. If any potential vendor ask questions regarding the specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by Becca Briggs, Principal and date specified
- j. The Becca Briggs, Principal will be responsible for securing all bids or proposals.
- k. The Principal, Becca Briggs will be responsible to ensure all SFA/Sponsor procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.
- l. The Principal, Becca Briggs will obtain a **cost or price analysis** to estimate the total dollar value of the contract, which includes product or service purchases for the duration of the contract.
SFA may use forecasted product needs and current or past product pricing to complete the cost analysis

Formal Purchase Procedures Table

| Category (List what product, services or supplies will be purchased) | Vendors (List vendors you are getting prices from) | IFB/RFP (List which type of formal method is being used) | Award Type (Fixed Price Contract, Fixed Price Contract with provision based on public CPI) | Duration/Frequency (Monthly, Yearly, Per Purchase) |
|--|--|---|--|--|
| EXAMPLE: Bakery/Bread | Wonder Breads, Earth Grains, Local Bakery, | IFB | Fixed price agreement | Yearly (August 1-May 28) |
| N/A | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

2. Required Contract Provisions

a. Contractual Procedures

Contracts for **more than \$250,000** for perishables, **\$25,000** for services or supplies, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

b. Termination Clause

All agreements in excess of \$10,000 must address:

- Termination for cause and for convenience by the non-Federal entity, and
- The manner in which it will be affected and the basis for settlement.

The SFA may use the following sample language in solicitations as applicable:

Termination for Cause:

Except as may be otherwise provided by this document, the awarded contract may be terminated in whole or in part by either party to the awarded contract in the event of failure by the other party to fulfill its obligations under the awarded contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given:

- a. at least thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and
- b. an opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) business days or such other reasonable amount of time as may be required under the circumstances, to rectify the defects in products or performance, prior to termination.

Termination for Convenience

The Immaculate Conception School may terminate an award prior to the expiration of the term, without cause and without penalty, upon thirty (30) days written notice to the selected Vendor.

c. Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “**federally assisted construction contract**” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

- **Federally assisted construction contract** means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the U.S. Government or borrowed on the credit of the U.S. Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the U.S. Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- **Construction work** means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

The SFA shall include the following sample language in solicitations as applicable:

The vendor certifies it is an Equal Opportunity Employer, a provider of services and/or assistance, and is in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, and Executive Orders 11246 and 11375. The vendor assures compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), all amendments to, and all requirements imposed by the regulations issued pursuant.

d. **Davis-Bacon Act**

When required by Federal program legislation, all **prime construction contracts in excess of \$2,000** awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

- a. In addition, contractors must be required to pay wages not less than once a week.
- b. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.
- c. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.
- d. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).

- e. The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- f. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

e. **Contract Work Hours and Safety Standards Act**

Where applicable, all contracts awarded by the nonfederal entity in **excess of \$100,000 that involve the employment of mechanics or laborers** must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

- ***Laborers and mechanics.*** This chapter applies to all laborers and mechanics employed by a contractor or subcontractor in the performance of any part of the work under the contract—
 - (A) including watchmen, guards, and workers performing services in connection with dredging or rock excavation in any river or harbor of the U.S., a territory, or the LEA of Columbia; but
 - (B) Not including an employee employed as a seaman.

f. **Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of “**funding agreement**” under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Notes: reference following definition of terms for this section:

- 37 CFR § 401.2 Definitions. As used in this part— (a) The term **funding agreement** means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
- 2 CFR §200.86 **Recipient**. Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include sub recipients. See also 2 CFR §200.69 Non-Federal entity.
- 2 CFR §200.93 **Sub recipient**. Sub recipient means a non-Federal entity that receives a sub award from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A sub recipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

g. **Clean Air Act**

Contracts **in excess of \$250,000** shall contain provision that require compliance with all applicable standards, orders, or requirements issued under Section 306 of the *Clean Air Act* (42 U.S.C. 1857[h]), Section 508 of the *Clean Water Act* (33 U.S. C. 1368), Executive Order 11738, and *Environmental Protection Agency (EPA) Regulation* (40 CFR §15), which prohibit the use of nonexempt federal contracts, grants, or loans of facilities included on the EPA list of violating facilities. The provision shall require reporting of violations to the grantor agency and to the EPA Assistant Administrator for Enforcement (EN-329). The contract must recognize mandatory standards and policies relating to energy efficiency that are contained in the State Agency conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

h. **Debarment and Suspension Certification**

An SFA is prohibited from contracting with an individual or company that has been debarred or suspended in accordance with 2 CFR § 180, as adopted and modified by USDA regulations at 2 CFR §417. There are three methods that may be used to verify that vendors have not been debarred, suspended, or excluded or otherwise ineligible for participation in Federal programs:

1. Check <https://www.sam.gov/portal/SAM/##11>
2. Collect certification from vendor
3. Add clause/condition to transaction with vendor

The SFA will use the following sample language when adding a clause to a solicitation/contract with a vendor:

The Vendor certifies that neither the Vendor or its principals; the sub-recipients or their principals; or the subcontractors or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal government pursuant to Executive Orders 12549 and 12689. The Vendor specifically covenants that neither the Vendor nor its principals; the subcontractors or their principals; nor the sub-recipients or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA"). By responding to this solicitation the Vendor is certifying they are in "Good Standing".

***See SECTION IV Appendix B for sample debarment and suspension certification.**

i. 2 CFR §180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking SAM Exclusions; or
- (b) Collecting a certification from that person; or
- (c) Adding a clause or condition to the covered transaction with that person

j. Lobbying Certification

The Byrd Anti-Lobbying Amendment requires a lobbying certification to be obtained for procurement contracts of more than \$100,000. Any vendor whose contract award is for more than \$100,000 must complete a Certification Regarding Lobbying form. The SFA must keep this signed certification statement on file with a copy of the vendor's contract.

***See SECTION IV Appendix E for sample lobbying certification.**

SECTION V - NON-COMPETITIVE NEGOTIATION

Name and Title of those responsible for Non-Competitive Negotiations: Becca Briggs, Principal

Non-competitive (sole source) procurement are purchases of a specific item made when an emergency arises that threatens continued service of the Child Nutrition Program, or which is available from only one contractor who is the sole manufacturer and distributor of the item. This is a rare occurrence and the school food service department must document its justification for needing the item and why only this specific item will meet this need.

When faced with a sole source procurement, the SFA must obtain CANS approval, and then go directly to the one source to negotiate terms, conditions, and prices.

If the SFA receives an inadequate number of responses to its solicitation and it is determined the procurement resulted in a lack of competition, the SFA must review the solicitation document to ensure no overly restrictive requirements or specification were used, an inadequate number of contractors were solicited, or not enough time was provided for contractors to respond to the solicitation document.

If items are available ***only*** from a single source ***when the award of a contract is not feasible under small purchase, sealed bid or competitive negotiation***, **NON-COMPETITIVE NEGOTIATION** procedures will be used:

1. 2CFR 200.323 Contract cost and price
The non-Federal entity must perform a **cost** or **price** analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications.
Contract and item amount that are under this threshold will ensure the negotiated price is reasonable.
2. Written Specifications will be prepared and provided to the vendor.
3. The Principal, Becca Briggs will be responsible for the documentation of records to fully explain the decision to use the non-competitive negotiation. The records will be available for audit and review.
4. The Principal, Becca Briggs will be responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive negotiation are met.
5. Non-competitive negotiations shall be used for one-time purchases of a new food item in order to determine food acceptance by students and for samples for testing purposes. A record of non-competitive negotiation purchase shall be maintained by the Immaculate Conception School, Business Officer. The record of non-competitive purchases shall include, at a minimum, the following:
 - item name
 - dollar amount
 - vendor
 - reason for non-competitive procurement

SECTION III Appendix A

Small Purchase Checklist

Did the SFA...

☐ **Forecast product needs**

Cycle menus, velocity reports, and production records are common tools used to forecast product needs. If the estimated value of goods or services needed (during the time period you wish to purchase them in) is greater than the micro-purchase threshold, and less than the small purchase threshold, the SFA should use the small purchase method of competitive quotations.

*The Federal micro-purchase method is \$10,000 and the Federal small purchase threshold is \$250,000 for perishables. The State of South Dakota threshold for services and supplies is \$25,000.

☐ **Seek to obtain price quotations from an adequate number of qualified sources**

At least two sources should be used to obtain price or rate quotations. Quotes may be obtained verbally or through writing (example: email) but must be documented. An informal purchase log is available on CANS website at: <https://doe.sd.gov/cans/>.

☐ **Give clear and accurate specifications**

Clear and accurate descriptions of the technical requirements must be provided for the product or service being procured. Specifications can be given verbally or in writing. In addition, if the SFA specifies a brand name product, it must allow an equal product to be offered.

☐ **Not restrict competition**

An SFA may not restrict competition by placing unreasonable requirements on vendors to qualify for business, requiring unnecessary experience or excessive bonding, or any other means of restricting competition.

☐ **Include Buy American Requirements when applicable**

SFAs are required by the Buy American Provision to purchase, to the maximum extent practicable, domestic commodities or products. An SFA must require that vendors understand and can meet these requirements. This can be done during the quotation process, by communicating the requirements to vendors verbally or in writing. An SFA may also obtain a certification statement from the vendor if it chooses to do so.

☐ **Select the correct vendor**

After quotes are obtained, the SFA must select the correct vendor based on the products or services requested and the vendor responses provided. If an SFA chooses to reject an offer, it should document why. For example, the vendor cannot deliver on the days or times that the SFA needs. If more than one vendor can provide all of the requested services and products, the award should be made to the lowest price offer.

☐ **Maintain records sufficient to detail the history of procurement**

Although quotations may be written or verbal, the SFA must document the quotations. A written agreement is not required but may be helpful to document all the terms and conditions of the agreement.

☐ **Keep records**

All procurement records must be kept for three years plus the current year. Invoices/receipts should show that the goods or services were purchased at the price that was quoted.

SECTION III Appendix B

INFORMAL PURCHASING LOG EXAMPLE

| Vendor Name: | | | | | | | | | | |
|---|--------------------------|--------------------------|--|----------|--------------------------|--|----------|--------------------------|--|----------|
| Items to be Purchased: <ul style="list-style-type: none"> Product specifications Delivery Frequency Packaging | Quantity Expected to Buy | Unit Price | Extended Price (Quantity x Unit Price) | *V S (✓) | Unit Price | Extended Price (Quantity x Unit Price) | *V S (✓) | Unit Price | Extended Price (Quantity x Unit Price) | *V S (✓) |
| 1. | | | | | | | | | | |
| 2. | | | | | | | | | | |
| 3. | | | | | | | | | | |
| 4. | | | | | | | | | | |
| 5. | | | | | | | | | | |
| 6. | | | | | | | | | | |
| 7. | | | | | | | | | | |
| TOTAL | | | \$ | | | \$ | | | \$ | |
| *Vendor Selected (VS) | | <input type="checkbox"/> | | | <input type="checkbox"/> | | | <input type="checkbox"/> | | |
| Date & Method of contact: | | | | | | | | | | |
| Name of person quoting pricing: | | | | | | | | | | |
| Duration quoted pricing is good for: | | | | | | | | | | |
| Additional Notes: | | | | | | | | | | |
| Signature of person completing this form: | | | | | | | | Date: | | |

*Vendor Selected (VS); you can award all items to one bidder (lowest total price) or you can award bid on a line item basis (lowest item price)

SECTION IV Appendix A

Formal Procurement Checklist - Did the SFA...

Forecast product needs

Cycle menus, velocity reports, and production records are common tools used to forecast product needs.

Conduct a cost or price analysis

Estimate the total dollar value of the contract, which includes product or service purchases for the duration of the contract.

- SFA may use forecasted product needs and current or past product pricing to complete the cost analysis

Write product specifications

Product specifications should include the product name, description, case pack and weight, minimum and maximum sizes and pieces, main ingredients, prohibited ingredients, nutritional standards or CN requirements, quality indicators, run and code numbers, etc.

- Note: specifications may include a brand name but must include 'or equal'. A bidder should have the opportunity to propose an equal product
- An SFA may pre-screen products and provide bidders with a list of preapproved equal products. The SFA must ensure maximum free and open competition during the procurement process, and pre-screening procedures should be included in the SFAs written procurement procedures.

Create a solicitation document

There are two types of formal solicitations: Invitation for Bid (IFB) and Request for Proposals (RFP)

Invitation for Bid (sealed bid)

Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid:

- conforms with all the material terms and conditions of the invitation for bids, and
- Is the lowest price

Request for Proposals (competitive proposal)

The contract is awarded to the responsible and responsive vendor whose proposal scored the highest number of points, and is most advantageous to the program with price and other factors considered

A well-written solicitation gives a bidder clear information on what the SFA is planning to purchase and how. A solicitation should include:

Background information on the LEA

- Size, number of meals served, etc.
- General descriptions of the goods and/or services to be purchased
- Solicitation should indicate if distribution services are requested
- Include distribution for processed USDA foods, if applicable
- Information about pre-proposal meeting to be held (if applicable)
- Date and time for solicitation submission
 - Time and location of public opening if IFB
- Time period of the contract and options for renewals
 - Generally, 1 year with 4 optional renewals
- Type of contract to be awarded
 - An IFB must result in a fixed fee or firm fixed price contract.
 - An RFP will result in a fixed price contract.
 - Fixed fee may be tied to a price index or price escalator/de-escalator clause

- Protest procedures
- Proposal withdrawal procedures
- List of all products to be purchased and specifications
- Options for 'piggybacking', adding goods or services, or increasing contract volume over time
 - Changes to the contract may not result in a material change- no more than a 10% change in contract value is recommended
- Criteria for award
 - IFB- award will be made to the lowest bidder
 - RFP- include all criteria that will be used to evaluate proposals
 - Cost must be the highest weighted factor but does not have to be 51%
 - A scoring rubric is required that identifies all evaluation factors and their relative importance
 - If using geographic preference, indicate how preference will be given
- Method for evaluating cost
 - How will cost be evaluated for the products or services requested? Common ways to evaluate cost are:
 - By line item: each line is awarded separately based on individual product cost
 - By product groupings: the total cost of groups of products are evaluated and awarded as a group. Example: frozen, produce, canned goods.
 - Bottom line (all-or-nothing): the total cost of the goods or services is evaluated; all products/services are awarded together.
 - Market basket cost analysis: representative sample of products, called a 'market basket' is used to estimate the total cost. The sample should consist of products that represent at least 75% of the total value of the contract (high-velocity items). The SFA must obtain a price for all products not included in the market basket prior to the award of the contract.
- Technical requirements of the vendor
 - Responsibilities of the vendor: delivery days, delivery windows, HACCP plan, staff requirements, etc.
 - Procedures for recalls or substitutions
 - Buy American Provision Requirements
 - Common legalities
 - Required forms and certifications: suspension and debarment, lobbying activities, anti-collusion, etc.
- Contract provisions required by 2 CFR 200 appendix II (as applicable):
 - Termination for cause and convenience- contracts in excess of \$10,000
 - Equal Opportunity Employment- 'federally assisted construction contracts'
 - Davis-Bacon Act- construction contracts in excess of \$2,000
 - Contract Work Hours and Safety Standards- contracts in excess of \$100,000 that involve the employment of mechanics or laborers
 - Right to inventions made under a contract or agreement- if the contract meets the definition of a 'funding agreement' under 37 CFR 401.2 (a)
 - Clean Air Act- contracts in excess of \$150,000
 - Debarment and Suspension- all federally awarded contracts
 - Byrd Anti-Lobbying Amendment- contracts in excess of \$100,000

Publicize the solicitation

Formal solicitations must be publicly advertised and seek/invite two or more qualified sources willing and able to compete.

Allow enough time for vendors to respond

Response time may vary depending on the complexity of the solicitation. A minimum of two weeks for IFBs and 30-35 days for RFPs is recommended.

Accept bids or proposals from responsive and responsible vendors

An SFA must determine if the vendor is responsive and responsible before accepting their bid or proposal.

- **Responsive:** Did the vendor respond to the IFB or RFP on time and include all required attachments, certifications, etc.?
- **Responsible:** Does the vendor meet the criteria outlined in the solicitation? Do they have a good track record with providing products and services to similar institutions?

Evaluate the bids or proposals

IFB:

- Bids are publicly opened at the location, date, and time prescribed in the IFB
- Any or all bids may be rejected if there is a sound, documented reason
- Cost is evaluated as outlined in the IFB, which includes all costs such as transportation and delivery costs

RFP:

- Proposals cannot be opened until after the closing date and time specified in the RFP
- An evaluation committee should score the proposals *only* on the criteria outlined in the RFP
- An SFA may conduct negotiations of the top-ranked proposals to ensure that each vendor fully meets the needs of the RFP. This must be done before cost proposals are opened. The SFA may also allow vendors to amend their cost proposal to reflect any changes made during the proposal negotiation. All negotiations must be done fairly and may not give a competitive advantage to one vendor.

Award the contract

Formal procurement should always result in a (signed) written contract between the two parties. The contract should include:

- Identification of the parties involved in the contract
- Contract duration
- Scope of work
- A complete list of products, including specifications (and price)
- Type of contract (fixed price)
 - All fees must be identified and agreed upon
- Contract renewal options, including provisions for changes such as the addition of goods or services
- Contract modification and change procedures
- Default and breach of contract provisions, remedies, cancellation procedures, and penalties
- Required compliance certifications
- Contract termination rights for cause and convenience
- Recordkeeping requirements
- Laws that govern the contract
- Sanitation and licensing requirements
- Professional certification requirements

Manage the contract

SFAs are responsible for ensuring that vendors are compliant with all terms of the contract. Contract management is ongoing for the duration of the contract.

Maintain records

The SFA must maintain records enough to detail the history of procurement. All records must be kept for a period of 3 years after the submission of the final claim for reimbursement for the fiscal year or longer if an audit has not been resolved.

Renew the contract as applicable

If the contract allowed for renewal options, both parties may agree to renew the contract for additional terms as applicable.

Add products to the contract

New products may be added to the contract if the cost of the new products does not create a material change (no more than 10% of the contract value is recommended). Substitutions for unavailable products are not considered new products.

The SFA should evaluate the estimated cost of new product(s) for the duration of the contract period and determine if the cost would be considered a material change against the total estimated contract value. No more than a 10% change is recommended.

If the cost to add new products would not constitute a material change, the SFA may add new products to the contract. During the contract renewal, the SFA must amend the contract to include additional items.

A new contract value is determined annually (or at the end of the contract term), and the new contract value may be used to estimate material changes moving forward.

If the cost to add new products would constitute a material change, the SFA may procure new products using another approved procurement method (micro-purchase, small purchase, formal purchase).

SECTION IV Appendix B (Page 1)

This form is available electronically.

OMB Control No. 0505-0027
Expiration Date: 04/30/2022



Certification Regarding Debarment, Suspension, and Other Responsibility Matters AD-1047

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a, as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. § 180.335, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction. According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal, civil, fraud, privacy, and other statutes may be applicable to the information provided.

(Read instructions on page two before completing certification.)

A. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, or proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (A.2.) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME

PR/AWARD NUMBER OR PROJECT NAME

NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)

SIGNATURE(S)

DATE

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, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or 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 discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint (<https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer>) 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.

SECTION IV Appendix B (Page 2)

Instructions for Certification

1. By signing and submitting this form, the prospective primary participant is providing the certification set out on page 1 in accordance with these instructions.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database..
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

SECTION IV Appendix D

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

| | | |
|---|---|--|
| 1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance | 2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award | 3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____ |
| 4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____ | 5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____ | |
| 6. Federal Department/Agency: | 7. Federal Program Name/Description: CFDA Number, if applicable: _____ | |
| 8. Federal Action Number, if known: | 9. Award Amount, if known: \$ _____ | |
| 10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): <div style="text-align: right;">(attach Continuation Sheet(s) SF-LLLA, if necessary)</div> | | |
| b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): <div style="text-align: right;">(attach Continuation Sheet(s) SF-LLLA, if necessary)</div> | | |
| 11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned | 13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____ | |
| 12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____ | | |
| 14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: <div style="text-align: right;">(attach Continuation Sheet(s) SF-LLLA, if necessary)</div> | | |
| 15. Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| 16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. | | |
| Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____ | | Federal Use Only: |
| | | Authorized for Local Reproduction Standard Form LLL (Rev. 7-97) |

SECTION IV Appendix E

CERTIFICATION REGARDING LOBBYING

Certification Regarding Lobbying: Applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal funds. Contractors that apply or bid for such an award must file the required certification.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee of [School] Independent School District in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee of [School] Independent School District in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.

Name of Food Service Management Company/Vendor _____

Address _____

Name/Title of Submitting Official _____

Signature _____