



HURON SCHOOL DISTRICT

PROCUREMENT PLAN FOR CHILD NUTRITION PROGRAMS

Adopted 4/16/2020
Updated 4/16/2023

This procurement plan will be implemented on April 16, 2020, from that date until further amended. This procurement plan will be reviewed and amended as needed, at minimum once annually to assure relevance to procurement procedures. All procurements must adhere to free and open competition. Source documentation should be available to determine open competition, reasonableness, allowability and the allocation of costs.

Amanda Reilly

Child Nutrition Director

Date

Signature

Kelly Christopherson

HSD Business Manager

Date

Signature

SECTION I – Procurement Plan Requirements

The plan for Huron School District (HSD) is to procure items for use in the Child Nutrition Programs and is as follows. This 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. **Document Retention**

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

- C. If the amount of food purchased is more than the Federal small purchase threshold currently valued at \$250,000, **OR** if the amount of nonperishable goods and services is more than the State of South Dakota small purchase threshold currently valued at \$25,000, **OR** the Local Agency (LA) approved threshold is more restrictive, formal procurement procedures will be used as required by federal Procurement Standards 2 CFR 200 and South Dakota Codified Law (SDCL) 5-18A-14 and SDCL 5-18A-22(12). Informal procurement procedures (small purchase price quotes) will be required for purchases under the most restrictive small purchase 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

D. **Buy American Provision**

By participating in federal school meal programs, Local Agencies are required to purchase domestic commodities and products for school meals to the maximum extent practicable. For purposes of this provision, the term domestic food commodity or product means an agricultural commodity produced in the United and a food product that is processed in the United States SUBSTANTIALLY (minimum 51%) using agricultural commodities that are produced in the United States.

While rare, two (2) exceptions may exist when:

1. the product is not produced or manufactured in the US in sufficient, reasonable, and available quantities of a satisfactory quality, and
2. competitive proposals reveal the cost of domestic product is significantly higher than a non-domestic product.

All products that are normally purchased by the distributor as non-domestic and proposed as part of this solicitation must be identified with the country of origin. Distributors shall outline their procedures to notify the school or agency when products are purchased as non-domestic.

Any substitution of a non-domestic product for a domestic product (which was originally part of the solicitation), must be approved by the Child Nutrition Director, prior to the delivery of the product to HSD. Any non-domestic product delivered to HSD without approval may be returned to the distributor and not accepted within 24 hours of delivery. If the substitution falls within one of the previously listed exceptions, the distributor should supply HSD with supporting documentation upon request.

The distributor must affirm their willingness to assert their best and reasonable efforts to ensure compliance with this federal rule.

E. 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 (<https://doe.sd.gov/cans/documents/CNPEquipment-Memo2.pdf>).
 - a. 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 complete the Child Nutrition Program Equipment Purchases Preapproval Request Form and forward it to local CANS representative for approval.
3. SFA shall keep documentation of approval and all documentation related to the procurement of capital equipment.
4. 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.

F. Code of Conduct / Conflict of Interest

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

As representatives of HSD employees are expected to conduct themselves in a professional and ethical manner, maintaining high standards of integrity and the use of good judgement. Employees are expected to be principled in their business interactions and act in good faith with individuals both inside and outside of HSD.

No employee, officer, or agent of HSD shall 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 any of the following has a financial or other interest in the firm selected for the award:

- 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 above parties.

All employees, officers, and agents of HSD that participate in the selection or award of contracts will attest either to no conflicts of interest or declare all real or apparent conflicts of interest on an annual basis.

The officers, employees, and agents of HSD entity may neither solicit nor accept gratuities, favors, or

anything of monetary value from contractors or parties to subcontracts including, but not limited to, entertainment, hotel rooms, transportation, gifts, or meals. HSD 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 HSD is set at \$5.00. In the event unsolicited gifts are received by Child Nutrition more than this amount, they will be declined. If a gift is perishable in nature and cannot be returned, it may be given to charity, shared with the office, or destroyed.

Any employee or board member who violates any of these standards of conflict shall be reported to the district Human Resources Representative for review.

G. Minority and Women's Businesses

Good faith effort will be made to include the following affirmative steps:

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;

H. Training

All staff conducting purchasing will be trained on procurement procedures.

I. Taste testing, sample procedures

Sample products may be given to HSD by a vendor or distributor for taste testing to determine student product acceptance and meal quality. HSD will limit samples to a reasonable amount based on the type of product and number of students and Child Nutrition personnel participating in the taste test.

J. Formal bid procedures will be applied on *the basis of a*:

- ☒ Centralized System (entire School Food Authority)
- ☐ Individual School (one school building within a School Food Authority)
- ☐ Multi-School Systems
- ☐ State contract (e.g., computers from the BOA, Office of Procurement Management Contracts, etc.)
- ☐ Combination of above (specify):

K. Emergency Planning

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 Child Nutrition Director or Business Manager. At a minimum, the following emergency procurement procedures shall be documented:

- item name
- dollar amount
- vendor
- reason for emergency

If necessary, in the course of a pressing need, to make an emergency purchase by means of 'piggybacking' on the bid of another district, approval must be obtained from, and appropriately documented by, the governing board.

If the emergency purchasing requires a contract, all books, records, and other documents relative to the award must be retained for three (3) years after final payment, or until audited by the local agency (whichever is sooner). The local agency its authorized agents, and/or State and/or USDA auditors shall have full access to and the right to examine any of said materials during this period. 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

L. 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. Institutions receiving funds through CNP are allowed to apply a geographic preference when procuring 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)*)

An SFA must still compare pricing from several suppliers when procuring unprocessed locally grown or locally raised agricultural products so that competitors have an opportunity to compete for the bid.

M. Beverage and Snack Agreement

HSD's exclusive beverage contracts do not involve nonprofit school food service account funds, in which case there are no federal FNS procurement issues involved. However, if any products are purchased via the exclusive beverage contract using nonprofit school food service funds, then all federal procurement requirements must be met. If small purchase procedures are used for a procurement of \$250,000 or less, price or rate quotations must be obtained from an adequate number of qualified sources. Additionally, if nonprofit school food service products are included in the contract, any rebates, commission, scholarship fund contributions, or any other payments back to the SFA or SFA-related organizations must be reimbursed to the nonprofit SFA on a prorated basis.

- a. There is no federal prohibition on multiyear contracts other than for Food Service Management Companies (FSMC). It is suggested, however, that school procurement officials consider the impact of multiyear contracts, as opposed to one-year contracts, on beverages and snacks. Long-term contracts would appear to be more appropriate for nonperishable products and services such as warehousing and equipment rental. As noted above, however, there is no federal prohibition on these longer-term contracts.
- b. Public Law 108-265, Section 102, requires a school participating in the NSLP shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place on the school premises or at any school-sponsored event during the extended school day.
- c. Schools participating in the NSLP must check all beverage contracts for language that may limit the sale of milk on school grounds. The sale of milk cannot be limited at any time during the extended school day or at any place on the school premises. Contracts may have language that is hard to understand. Look for the term Exclusive Pouring Rights. Every school LEA must have amended their beverage contracts that limit the sale of milk should such language exist. The primary effect of this provision is to prevent contract limitations on the sale of fluid milk in competition with other beverages.

SECTION II – MICROPURCHASING

According to the 2CFR 200.67, micro-purchasing can be utilized to minimize the administrative burden and cost of completing an informal or formal purchasing procurement process for small purchases. HSD may utilize micro-purchasing to make purchases in emergency situations to continue uninterrupted service.

Micro-purchasing may be used when the following conditions are met:

1. One aggregate transaction does not exceed \$10,000;
2. Purchase prices shall be reasonable;
3. Purchases shall be spread equitably among qualified suppliers to the extent practicable.

HSD is committed to:

- Not using micro-purchasing instead of required procurement methods.
- Reviewing all micro-purchases to ensure they are being used with the best intent for the program.
- Distributing micro-purchases between multiple suppliers to 'share the wealth' if the price is considered reasonable.
- Examining items being purchased to see if purchasing them in a different manner could result in a better price.

The following procedures will be used for routine micro-purchases:

Vendor	Good or Service	Justification / Reasoning	Duration/ Frequency
Bernards	Seasonings	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed
Coborns	Frozen Foods, Refrigerated Foods, Fresh Produce, Dry Foods, Special Diet Supplies	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed
Cash-Wa	Miscellaneous Supplies and equipment	Available within 10 miles of district or provides delivery services. This distributor will receive equitable share of purchases with like distributors.	As Needed
Cole Papers	Paper products, small wares	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed
Colin Beveridge	Fresh Local Produce	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	In Season / As Needed
Hebda Produce	Fresh Local Produce	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	In Season / As Needed
Innovative Office Solutions	Miscellaneous Supplies	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed
Lewis Drug	General Department Supplies, First Aid/Pharmaceutical Supplies	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed
Wal-Mart	Frozen Foods, Refrigerated Foods, Fresh Produce, Dry Foods, Special Diet Supplies, General	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed

	Department Supplies		
Larson Melons	Fresh Local Produce	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed/ In Season
Nature Seal	Fruit Preservative	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed
Ace Hardware	General Department Supplies	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed
Culinox	Miscellaneous Small Wares and Equipment	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed
IS Restaurant Equipment and Supply	Miscellaneous Small Wares and Equipment	Available within 10 miles of district or provides delivery services. This store will receive equitable share of purchases with like distributors.	As Needed
<i>As needed purchases are made based on situation and need. Purchases may be influenced by equipment failures, menu changes, primarily distributor availability, or recipe development.</i>			

Examples when micro-purchasing may be required are (but are not limited to):

- Primary/usual distributor was unable to fulfill the quantity of a product you needed for the week and therefore are short. Product could be obtained at a local business to fulfill what is needed for the day/week.
- Spices or other low-cost items that are used often but not purchased frequently in great quantity.
- Farm to school or fresh fruit/vegetable purchases.
- Special diet items and products that are not available through primary distributors and would not be ordered in large quantities, and therefore are better purchased through a local, specialized market.

SECTION III – SMALL PURCHASE PROCUREMENT

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

HSD's small purchase threshold is \$250,000 for perishable products and \$25,000 for services or supplies.

Additional requires of small purchasing procurement procedures are listed as follows:

1. Written specifications will be prepared and provided to a minimum of two vendors.
2. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications.
3. The child Nutrition Director or designee will be responsible for contacting potential vendors when price quotes are required.
4. The price quotes will receive the appropriate confidentiality before award.
5. Quotes will be awarded by the Child Nutrition Director with assistance of district administration, as needed. Quotes should be awarded to the lowest and best quote based on availability, quality, service availability, price, and/or provisions of blank equipment, food presentation, or food preservation.
6. The Child Nutrition Director will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from vendors, and written specifications.
7. Any time an accepted item is not available, the Child Nutrition Director will select the acceptable alternative. Full documentation will be made available as to the selection of the acceptable item.
8. Bids will be awarded on the criteria of lowest price, quality, service and delivery. Lowest price should be the primary factor taking into consideration availability of service and delivery fees.
9. The Child Nutrition Director is required to review and approve selections. All vendors that submitted a response must be notified that they were either selected or not selected.

Audit Requirements: A minimum of once per agreement or contract period, 10% of purchased items or a minimum of three items whichever is greater), should be checked for price accuracy, meets specification requirements, and Buy America requirement. The Child Nutrition Director or designee will document items reviewed on a procurement audit log, record their name, date, and the results of the audit.

Contracts in excess of \$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	Goods or Service	Justification/Reasoning	Duration/Frequency
Buller Fixture/CWD	Miscellaneous Small wares and Equipment	3 bids and a buy are sent to at least 3 vendors	As needed
Performance FS	Miscellaneous Small wares and Equipment	3 bids and a buy are sent to at least 3 vendors	As needed
Culinex	Miscellaneous Small wares and Equipment	3 bids and a buy are sent to at least 3 vendors	As needed
Restaurant Supply (IS)	Miscellaneous Small wares and Equipment	3 bids and a buy are sent to at least 3 vendors	As needed
Cole Paper	Miscellaneous Small wares and Equipment	3 bids and a buy are sent to at least 3 vendors	As needed
Innovative Office Solutions	Miscellaneous Small wares and Equipment	3 bids and a buy are sent to at least 3 vendors	As needed

SECTION IV – FORMAL PROCUREMENT

HSD will use formal procurement methods as required by 2 CFR Part 200.318-326 if the amount of purchase is above \$250,000 for perishables or \$25,000 for services and supplies.

Formal procurement methods include:

- Competitive Sealed Bid – Invitation for Bid (IFB)
 - In awarding an IFB, a firm fixed price is awarded to the bidder that is most responsive and responsible and is the lowest price. An IFB must result in a fixed fee/firm price contract.
 - Suggested by USDA to allow 45 days for IFB from the time of information distribution to vendors until the time of bid opening
- Competitive Proposal – Request for Proposal (RFP)
 - 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.
 - Suggested by USDA to allow 60 days for RFP from the time of information distribution to vendors until the time of bid opening.

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:

1. An announcement of an **Invitation for Bid (IFB) or a Request for Proposal (RFP)** will be placed in the local newspaper to publicize the intent to purchase needed items. The advertisement for bids/proposals or legal notice will be run for at least two publishing cycles (weekly publishing dates). Additionally, direct contact will be made with all known qualified vendors.

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.
2. Any person who develops written specifications or descriptions for procurements will be **prohibited** from submitting bids or proposals for such products or services.
 3. The IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the solicitation document:
 - Description of the goods and services to be procured and the method of evaluation and type of contract to be awarded.
 - Method, date, time, and location of bid/proposal opening. (IFB requires a public opening).
 - Method in which a vendor will be informed of bid/proposal acceptance or rejection.
 - Method of shipment or delivery, as well as a delivery schedule.
 - Set forth requirements (terms and conditions) which bidder/proposer must fulfill.
 - Statement assuring efforts will be made to involve minority and small business.
 - Technical requirements, specifications, and forecasted quantities.
 - Proposal withdrawal and protest procedures.
 - All required federal contract provisions (as applicable) outlined in 2CFR200 Appendix II (see *Section VI – Appendix A of this document*).

4. **Audit Requirements**

HSD and involved purchasing group reserves the right to conduct quarterly audits on all formal bid contracts. A minimum of one audit per contract term, including a maximum of 30 audit items (selected by SFA/Purchasing Group) will be administered. Audit item list, instructions and timeline will be provided to distributor at least ten (10) days in advance.

If available, in-person audit review of audit findings will be held at a pre-determined location, with a representative from the distributor and each SFA involved in the contract in attendance.

If an error rate of 10% is found, a complete audit may be requested.

5. **Evaluation Criteria to award an RFP**

The lowest price will be the heaviest weighted evaluation criteria, but it is not required to be greater than 50% of points.

Additional criteria in the form of SCORECARDS may be used to evaluate bids/proposals. Things like quality of product, delivery fees and services, technical service capability, references, business practices or customer service of company will be considered.

The HSD Child Nutrition Director is responsible to review the purchase and is responsible for documenting compliance of the purchase.

6. HSD Child Nutrition Director will be responsible for:

- providing purchase information and conditions in writing to all potential bidders;
- securing bids and proposals;
- ensuring procurements are conducted in compliance with Federal, State, and local regulations; and
- obtaining 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.

Vendor	Goods or Service	Justification/ Reasoning	Duration/Frequency
Performance FS	Prime vendor for SBP/NSLP food	Awarded the RFP	22-23 SY
Avera Pace	Prime vendor for milk	Awarded the IFB	22-23 SY

SECTION V – NON-COMPETITIVE NEGOTIATION

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 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.
2. Written Specifications will be prepared and provided to the vendor.
3. The Child Nutrition Director 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 Child Nutrition Director 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 Child Nutrition Department (Department Director). The record of non-competitive purchases shall include, at a minimum, the following:
 - item name
 - dollar amount
 - vendor
 - reason for non-competitive procurement

SECTION VI – RESOURCES AND APPENDICIES

Additional Resources:

- South Dakota Department of Education Child and Adult Nutrition Services Procurement Webpage: <https://doe.sd.gov/cans/>
- South Dakota Farm to School Resource Guide Webpage: <https://extension.sdstate.edu/south-dakota-farm-school-resource-guide>
- Procurement with Geographic Preference MEMO: <https://fns-prod.azureedge.us/sites/default/files/cn/SP18-2011os.pdf#page=2>
- Institute of child Nutrition Procurement in the 21st Century Resources: <https://doe.sd.gov/cans/documents/ICN-procurement.pdf>

Included Appendices:

- Appendix A – Buy American Certification
- Appendix B – Small Purchase Checklist
- Appendix C – Informal Purchasing Log
- Appendix D – Formal Procurement Checklist
- Appendix E – Federal Required Contract Provisions (expanded to include Debarment & Suspension and Anti-Lobbying Certification)

Appendix A – Buy American Certificate



Child & Adult Nutrition Services
800 Governors Drive
Pierre, SD 57501-2235
T 605.773.3413
F 605.773.6846
www.doe.sd.gov

To: Authorized Representatives of Child Nutrition Programs: School Nutrition Program, Child and Adult Care Food Program, and Summer Food Service Program

From: Child and Adult Nutrition Services

Date: March 1, 2018

Subject: Buy American Certification

Memo Number: SNP 251-1
CACFP 251-1-1
CACFP DCH 251-1
SFSP 251-1

The purpose of this memo is to give guidance in regard to meeting the requirements of Section 204(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998. This Act requires schools and institutions participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to purchase domestic commodities or products for use in these meals, to the maximum extent practicable.

Domestic commodity or product is defined as one that is produced and processed in the United States substantially using agricultural products that are produced in the United States. Substantially, per the report, means that over 51% of the final, processed product, consists of domestically grown product.

Attached is a form to provide an example form showing what information to collect from vendors providing these products. This information should be shared with your School Food Authority (SFA) purchasing authority and all employees involved in the procurement process.

Questions about this memo can be referred to a SD Dept. of Education Child and Adult Nutrition Services staff member.

Buy American Certification

Buy American regulation requires school food authorities (SFAs) to purchase domestic commodities or products to the maximum extent possible. Domestic commodities or products are defined as:

1. An agricultural commodity that is produced in the U.S.
2. A food product that is processed in the U.S. substantially using agricultural commodities produced in the U.S.
3. Unprocessed, agricultural commodities must be domestic.
4. Processed foods must be processed domestically using domestic agricultural food components that comprise over 51% domestically grown items, by weight or volume.

I certify that the products listed below **do not** meet the qualifications of Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1988.

FNS does allow for limited exceptions to the Buy American provisions when 1 of 2 events occur:

- 1: a specific product is not produced or manufactured in the U.S. "in sufficient and reasonable available quantities of a satisfactory quality"; and
- 2: when competitive bids show that the costs of the U.S. products are significantly higher than nondomestic products. SFAs that use one of these exceptions are not required to request a waiver in order to purchase a nondomestic product, but they must maintain documentation justifying the exception

Product Name	Product/Manufacturer's Code	Country of Origin	Qualification #1 or 2?

I certify the accuracy of the information provided above:

Distributor Name:			
Distributor Representative:			
Title:			
Signature:		Date:	

Appendix B – 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.

Appendix C – Informal Purchasing Log (EXAMPLE)

INFORMAL PURCHASING LOG EXAMPLE

Vendor Name:										
<u>Items to be Purchased:</u> <ul style="list-style-type: none"> Product specifications Delivery Frequency Packaging 	Quantity Expected to Buy	Unit Price	Extended Price (Quantity x Unit Price)	*VS (✓)	Unit Price	Extended Price (Quantity x Unit Price)	*VS (✓)	Unit Price	Extended Price (Quantity x Unit Price)	*VS (✓)
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)

Appendix D – 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.

- o 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.

- o Note: specifications may include a brand name but must include 'or equal'. A bidder should have the opportunity to propose an equal product
- o 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:

- o Conforms with all the material terms and conditions of the invitation for bids, and
- o 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

- o Size, number of meals served, etc.
- o General descriptions of the goods and/or services to be purchased
- o Solicitation should indicate if distribution services are requested
- o Include distribution for processed USDA foods, if applicable
- o Information about pre-proposal meeting to be held (if applicable)
- o Date and time for solicitation submission
 - Time and location of public opening if IFB
- o Time period of the contract and options for renewals
 - Generally, 1 year with 4 optional renewals
- o 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
- o Protest procedures
- o Proposal withdrawal procedures
- o List of all products to be purchased and specifications
- o 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
- o 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
- o 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).

Appendix E – 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 HSD 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.

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

- f. 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.
- g. 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".

*More information and form available at: <https://www.usda.gov/sites/default/files/documents/ad-1047.pdf>

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.

**More information and form available at:*

https://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/SF-LLL_9707V01.pdf