REQUIRED CLAUSES

In addition to other provisions required by the Federal agency or non–Federal entity, all contracts made by a non–Federal entity under a Federal award must contain provisions set forth in 2 C.F.R. Pt. 200, App. II., **as applicable**. Please note, however, that not all of these provisions must be included in every contract awarded by a school district's food service department. If you are unsure whether you will need to include a specific federal clause in your contract, please consult with an attorney.

2 C.F.R. Pt. 200, App. II

In addition to other provisions required by the Federal agency or non–Federal entity, all contracts made by the non–Federal entity under the Federal award must contain provisions covering the following, as applicable.

- **REMEDIES:** If the contract is for more than the simplified acquisition threshold currently set at $150,000, your contract must include a clause that addresses administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. The USDA does not prescribe the form or content of these clauses. Check with an attorney to determine if state or local law prescribes the use of specific language.

- **TERMINATION:** If the contract is in excess of $10,000, your contract must contain a clause that addresses termination for cause and for convenience by the school district including the manner by which it will be effected and the basis for settlement. The USDA does not prescribe the form or content of these clauses. Check with an attorney to determine if state or local law prescribes the use of specific language.

- **CLEAN AIR / CLEAN WATER:** For contracts and subgrants of amounts in excess of $150,000, your contract must include a clause requiring the contractor to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387) and the contractor must agree to report all violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

  Neither KDE nor the USDA prescribes the form or content of these clauses. The following are suggestions of clauses that can be used:

  - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.
  - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 et seq. The Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.

- **SUSPENSION AND DEBARMENT:** Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from

that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required.

The following clause language is suggested, but not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

- Suspension and Debarment

  The Contractor understands that a contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension."

  By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

  The certification in this clause is a material representation of fact relied upon by {**insert name of school district**}. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to {**insert name of school district**}, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 180.220 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- **LOBBYING:** Contractors that apply or bid for an award exceeding $100,000 must file the required certification pursuant to Byrd Anti–Lobbying Amendment (31 U.S.C. 1352).
  The following clause is suggested, but not mandatory.

  Neither KDE nor the USDA prescribes the form or content of these clauses. The following is a suggestion of clause that can be used:

  - The Contractor will comply with the Byrd Anti–Lobbying Amendment (31 U.S.C. 1352) and the New Restrictions on Lobbying and has signed and attached to this agreement the Certificate Regarding Lobbying and, if applicable, the Disclosure of Lobbying Activities (Forms SF-LLL) and annually will sign and submit a certificate, if applicable, Form SF-LLL to the **{insert name of contracting entity**}.

- **EQUAL EMPLOYMENT OPPORTUNITY**. This clause would be required only for contracts that meet the definition of "federally assisted construction contract." Generally speaking, expenses associated with construction projects are not an allowable expenses to the non-profit food service account. Because these are generally not allowable expenses, a food service department should not be awarding contracts of this nature. You should consult with an attorney to determine whether this clause should be included.

- **DAVIS–BACON ACT CLAUSE.** This clause would be required only for prime construction contracts in excess of $2,000 awarded by non–Federal entities. Generally speaking, expenses associated with construction projects are not an allowable expenses to the non-profit food

service account. Because these are generally not allowable expenses, a food service department should not be awarding contracts of this nature**.** You should consult with an attorney to determine whether this clause should be included.

- **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT CLAUSE.** This clause would be required only for contracts awarded by the non–Federal entity in excess of $100,000 that involve the employment of mechanics or laborers. Generally speaking, expenses of this amount and of this nature are associated with construction projects. Generally speaking, expenses associated with construction projects are not an allowable expenses to the non-profit food service account. Because these are generally not allowable expenses, a food service department should not be awarding contracts of this nature**.** You should consult with an attorney to determine whether this clause should be included.

- **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**. This clause is only necessary when the award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the school food authority 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 subrecipient 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. A food service department generally does not award contracts of this nature**.** You should consult with an attorney to determine whether this clause should be included.

- **PROCUREMENT OF RECOVERED MATERIALS PURSUANT TO 2 C.F.R. § 200.322.** This provision only applies to a non–Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. You should consult with an attorney to determine whether this clause applies to you and your contractors.

PROVISIONS REQUIRED BY THE FEDERAL AGENCY (USDA)

Please keep in mind that this document only addresses the requirements of 2 C.F.R. Pt. 200, App. II. Districts will also have to ensure that the contract includes the requirements of provisions of 7 CFR 210.21.

- **BUY AMERICAN.** The Buy American provision was added to the National School Lunch Act (NSLA) by Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336). Section 12(n) to the NSLA (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodity or product.

  The following clause language is suggested, but not mandatory:

  - "Domestic Commodity or Product" are defined as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States.

    "Substantial" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States.

The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards SFAs must comply with when purchasing commercial food products served in the school meals programs.

Buy American: Schools participating in the federal school meal programs are required to purchase domestic commodities and products for school meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity that is produced in the US and a food product that is processed in the US substantially (at least 51 percent) using agricultural commodities that are produced in the US.

Federal regulations require that all foods purchased for Child Nutrition Program be of domestic origin to the maximum extent practicable. While rare, two (2) exceptions may exist when:
the product is not produced or manufactured in the US in sufficient, reasonable and available quantities of a satisfactory quality, such as bananas and pineapple; and
competitive proposals reveal the cost of a domestic product is significantly higher than a non-domestic product.

ALL products that are normally purchased by Distributor as non-domestic and proposed as part of this solicitation must be identified with the country of origin. Distributor shall outline their procedures to notify School when products are purchased as non-domestic.
Any substitution of a non-domestic product for a domestic product (which was originally a part of the solicitation), must be approved, in writing, by the Food Service Director, prior to the delivery of the product to the School. Any non-domestic product delivered to the School, without the prior, written approval of the Food Service Director, will be rejected.

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

- **COST REIMBURSABLE CONTRACTS.** The school food authority must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts.

  The contract language provided below is mandatory.

  - Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

  - The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account);

or

The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

- The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;

- The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;

- The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and

- The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

- Prohibited expenditures. No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.