



**PROCUREMENT PLAN  
FOR CHILD NUTRITION PROGRAMS**

**SECTION I- Procurement Plan Requirements**

The plan for the Bon Homme School District #04-2 is to procure items for use in the Child Nutrition Programs and is as follows:

- a. The procurement plan provides for free and open competition, transparency in transactions, comparability, and documentation of all procurement activities.
- b. Regardless of procurement method, the following factors will be determined regarding the allowability of costs:
  - a. Be necessary and reasonable for proper and efficient administration of the program(s)
  - b. Be allocable to federal awards applicable for the administration of the program(s)
  - c. Be authorized and not prohibited under state and local law
- c. Purchasing will be conducted at the most restrictive procurement threshold:

	<b>Federal Procurement Threshold</b>	<b>Bon Homme School District Procurement Threshold</b>
<b>Micro-Purchase</b>	Less than \$10,000	Less than \$10,000
<b>Small Purchase</b>	Less than \$250,000	Less than \$250,000
<b>Formal Purchase</b>	Greater than \$250,000	Greater than \$250,000
<b>Formal Purchase/Services and Supplies</b>	Greater than \$25,000	Greater than \$25,000
<b>Capital Equipment/Not on Pre-Approved List</b>	Greater than \$5,000	Greater than \$5,000

- d. All staff conducting purchasing will be trained on the procurement procedures.
- e. All purchasing records must be maintained no less than the current year plus three additional years.

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 Bon Homme School District #04-2 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 district. 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)
  - (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
  - (b) Price of the non-domestic product that meets the required specification of the domestic product

**g. 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.

**h. Protest Procedures**

Protest procedures are required. The Bon Homme School District will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protester must exhaust all administrative remedies with the Bon Homme School District before pursuing a protest with a federal agency. Reviews of protests by the federal agency will be limited to:

- a. 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).
- b. Violations of the Bon Homme School District'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 Bon Homme School District.

The Bon Homme School District shall include the following written protest procedures in all solicitations: Any bidder, person, or entity may file a bid protest with the Bon Homme School District. The protest shall specify the reasons and facts upon which the protest is based and shall be filed, in writing, to the Bon Homme School District no later than 10 business days after the date of the bid award or notice of unsuccessful bid. Bon Homme School District will investigate the basis for the bid protest and analyze all facts. The Bon Homme School District 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 Brad Peters, Superintendent of Schools, PO Box 28, Tyndall, SD 57066.

The Bon Homme School District will issue a written decision within 10 calendar days following receipt of the Bid protest, unless factors beyond the Bon Homme School District 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 Bon Homme School District. 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.

i. **Minority and Women's Businesses**

The Bon Homme School District 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:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources
- c. 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
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
- e. 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
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

## **SECTION II – PURCHASING EQUIPMENT**

If the amount of purchases for equipment is greater than \$5,000 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>
2. If the equipment is less than the \$5,000 **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.
3. If the equipment is over the \$5,000 **OR** is **not** on the Approved Equipment List, Child and Adult Nutrition Services (CANS) must approve the equipment before it can be purchased. The Bon Homme School District will contact CANS for approval.
4. The Bon Homme School District 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 Bon Homme School District for financial statement purposes, or \$5,000.00.

## **SECTION III – MICROPURCHASING**

**Name and Title of those responsible for Micro-Purchase Procedures:** Food Service Management Company, or Gary Kortan, Business Manager

If the amount of purchases for items is less than \$10,000 the following procedure will be used.

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. If the Bon Homme School District is unable to spread purchases equitably, it shall document the reason why.

**Micro - Purchase Procedures Table**

<b>Store &amp; Category</b>	<b>Justification</b>	<b>Duration/ Frequency</b>
Cahoy's	Emergency food/supply purchases	As needed
Family Dollar	Emergency food/supply purchases	As needed
Berendsen Plumbing	Emergency or Minor Repairs, service and parts	As needed
Ace Hardware	Emergency or Minor Repairs, service and parts	As needed
Cash-Wa Distributing	Food/supply purchases or equipment	As needed
Central Restaurant	Food/supply purchases	As needed
Fischer Electric	Repairs, service and parts	As needed
Haases H & C	Emergency or Minor Repairs, service and parts	As needed
Harts Floor & Appliance	Equipment	As needed
Heiman Fire Equipment	Inspections	Semi-Annual
Hobart Sales & Service	Emergency or Minor Repairs, service and parts	As needed
Hornstra H & C	Emergency or Minor Repairs, service and parts	As needed
Schmidt's Service	Propane	As needed
Superior Hood Steamers	Maintenance of vent hood	As needed
Sanders Refrigeration	Emergency or Minor Repairs, service and parts	As needed
Infinite Campus Lunch	Software	Annually

**SECTION IV – SMALL PURCHASE PROCUREMENT**

**Name and Title of those responsible for Small Purchase Procedures:** Food Service Management Company

If the amount of purchases for items less than \$250,000 Small Purchase Procedures must be followed. Quotes documented from an adequate number of qualified sources will be required.

1. Written specifications will be prepared and given to a minimum of two vendors.
2. The Food Service Management Company will be responsible for contacting potential vendors when price quotes are needed.
  - a. Clear and accurate descriptions of the technical requirements provided for the product, or service being procured shall be provided.
  - b. The Food Service Management Company shall not restrict competition in any way, including unreasonable requirements, excessive bonding, or specifying a brand name without allowing an equal product to be bid.
  - c. Buy American requirements shall be included when applicable.
3. Quotes will be awarded by the Food Service Management Company. An award will be made to the responsive and responsible vendor whose quote is lowest in price.
4. The Food Service Management Company will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications.
5. The Food Service Management Company will be responsible for documentation that the actual product specified is received at the documented price.
6. Any time an accepted item is not available, the Food Service Management Company 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.

## SECTION V – FORMAL PROCUREMENT

**Name and Title of those responsible for Formal Procurement Procedures:** Brad Peters, Superintendent, or Gary Kortan, Business Manager

1. If the amount of purchases is above \$250,000, or a Food Service Management Contract, formal procurement procedures will be used as required by 2 CFR Part 200.318-326.
  - a. Bon Homme School District will perform a cost analysis in connection with every procurement in excess of the Small Purchase Threshold including contract modifications. Bon Homme School District will also use forecasted product needs and current or past product pricing to complete the cost analysis. This analysis is to be included in the solicitation
  - b. 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: Time allowed for an Invitation for Bid will be 45 days and time allowed for a Request for Proposal will be 60 days from the time the information is given to vendors until the time of bid opening.
  - c. An announcement of an **Invitation for Bid (IFB) or a Request for Proposal (RFP)** will be placed in The Tyndall Tribune, the Springfield Times, and the Bon Homme School District website (<http://www.bonhomme.k12.sd.us>) to publicize the intent to purchase needed items. The advertisement for bids/proposals or legal notice will be run for two weeks.  
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.
  - d. Any person who develops written specifications or descriptions for procurements will be ***prohibited*** from submitting bids or proposals for such products or services.
  - e. 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
    - The Bon Homme School District 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 (IFB- fixed price only, RFP- fixed price or cost- reimbursable)
    - Criteria for award and method for evaluating cost
    - (Cost-reimbursable contracts only) Statement regarding the return of purchase incentives, discounts, rebates, and credits to the non-profit Child Nutrition account
    - All required federal contract provisions (as applicable) outlined in 2CFR200 Appendix II

f. 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.

g. 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.

Evaluation Criteria the Bon Homme School District may use to award an RFP.

*Weight (points) Criteria*

20	<i>Cost</i>
14	<i>Experience, References</i>
14	<i>Financial, Condition/Stability, Business Practices</i>
10	<i>Personnel Management</i>
9	<i>Service Capability Plan</i>
9	<i>Accounting &amp; Reporting Systems</i>
9	<i>Promotion of the School Food Service Program</i>
8	<i>Innovation</i>
7	<i>Involvement of Students, Staff, and Patrons</i>

100 points      *TOTAL*

- h. Specifications and estimated quantities of products and services prepared by the Bon Homme School District and provided to potential contractors desiring to submit bids/proposals for the products or services requested.
- i. If any potential vendor asks questions regarding the specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the Bon Homme School District.
- j. The Bon Homme School District will be responsible for securing all bids or proposals.
- k. The Bon Homme School District will be responsible to ensure all SFA/Sponsor procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.

**Formal Purchase Procedures Table**

<b>Category</b>	<b>IFB/RFP</b>	<b>Award Type</b>	<b>Evaluation Used</b>	<b>Duration/Frequency</b>
Contracted Meals	RFP	Fixed Price Contract based on CPI	State Agency Prototype	1 year with option to renew once a year for 4 additional years

**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
- The manner in which it will be affected and the basis for settlement

The Bon Homme School District 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
- 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 Bon Homme School District 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 Bon Homme School District 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 70 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 Bon Homme School District 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".

i. **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 Bon Homme School District will keep this signed certification statement on file with a copy of the vendor's contract.

## SECTION VI - NON-COMPETITIVE NEGOTIATION

**Name and Title of those responsible for Non-Competitive Negotiations:** Food Service Management Company, Brad Peters, Superintendent, or Gary Kortan, Business Manager

Non-competitive (sole source) procurement are purchases of a specific item which is available from only one contractor who is the sole manufacturer and distributor of the item. 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 Food Service Management Company must go directly to the one source to negotiate terms, conditions, and prices.

If the Food Service Management Company receives an inadequate number of responses to its solicitation and it is determined the procurement resulted in a lack of competition, the Food Service Management Company 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. Written Specifications will be prepared and provided to the vendor.
2. The Food Service Management Company 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.
3. The Food Service Management Company will be responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive negotiation are met.
4. 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 Food Service Management Company. The record of non-competitive purchases shall include, at a minimum, the following:
  - item name
  - dollar amount
  - vendor
  - reason for non-competitive procurement

## SECTION VII – EMERGENCY PURCHASING

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 Food Service Management Company. The following emergency procedures shall be followed. All emergency procurements shall be approved by Brad Peters, Superintendent of Schools. 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 Food Service Management Company 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

## SECTION VIII – RESOURCES AND APPENDICIES

### **Additional Resources:**

- South Dakota Dept. 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>
- School Nutrition Association Procurement Zone:  
<https://schoolnutrition.org/learning-center/procurement/>
- Institute of Child Nutrition Procurement in the 21<sup>st</sup> Century Resources:  
<https://doe.sd.gov/cans/documents/ICN-procurement.pdf>