

## FOOD SERVICE PROCUREMENT POLICY

The District shall adhere to the most restrictive of federal<sup>1</sup>, state, and school district standards (see HCAA-E) for the procurement of goods, products, and/or services for use in all School Nutrition Programs<sup>2</sup>. All procurement activities must be fair, open, competitive, transparent in transactions, comparable, and documented.

### Definitions

This policy defines the following:

- *Chief Procurement Officer* means an individual who is responsible for developing and administering the purchasing program of the District, including the development and implementation of a requisition and purchasing system that is efficient, economical, and meets the standards set forth in district policy (HCAA.)
- *Informal procurement* is commonly referred to as procurement under the small purchase threshold or simplified acquisitions. Although this method is permitted when the amount of a purchase falls at or below the most restrictive small purchase threshold, a district could choose to use the formal procurement method rather than the informal procurement method.
- *Formal procurement* occurs when a district's purchases exceed the Federal, State, or local small purchase threshold (whichever is more restrictive). Within formal procurement there are two methods available: Competitive Sealed Bidding (commonly referred to as sealed bidding and uses an invitation for bid or IFB) and Competitive Negotiation (which uses a request for proposal or RFP).
- *Invitation for Bid (IFB)* is a formal method used when the only significant point of differentiation between vendors is the price. An IFB requires the organization to provide clear, concise specifications and should describe the minimum standards expected of a responsible respondent in measurable terms. Bids will be solicited from an adequate number of known suppliers, providing them with sufficient time<sup>3</sup> to respond prior to the date set for opening the bids. An IFB is a formal method of procurement that uses sealed bidding and results in a fixed price contract with or without adjustment factors. IFBs will be publicly opened at the time and place prescribed in the IFB. The contract is awarded to the bidder whose bid conformed to all the terms and conditions of the IFB.
- *Request for Proposal (RFP)/Competitive Proposal* identifies the goods, products, and/or services needed, and all significant evaluation factors. It differs from bids and quotes in that there are other factors<sup>4</sup> that are considered in making an award. While price alone is not the sole basis for award, price remains the primary consideration when awarding a contract under the competitive proposal method. The RFP is publicized and is used to solicit proposals from a number of

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<sup>1</sup> 7 CFR Part 225.17 and 2 CFR Part 200.317-326

<sup>2</sup> <https://www.fns.usda.gov/>

<sup>3</sup> ND State Procurement Office recommends 21 days

<sup>4</sup> Factors include, but are not limited to, experience, technical expertise, past experience, and quality of proposal.

sources. Competitive proposals may be used if conditions are not appropriate for the use of competitive sealed bids.

The RFP must include all evaluation factors and their relative importance. The contract will be awarded to the vendor that is the most advantageous with price and other factors being considered. However, the cost/price must be the primary factor and carry the highest evaluation weight. Therefore, all RFP Solicitations must include provision for evaluation and scoring factors.

- *Request for Quotations (RFQ)* is similar to bidding except that it is less formal. In some cases it is simply calling several vendors and asking for the price on the goods or services being requested and writing that down. A RFQ is commonly used when you know what you want but need information on how vendors would meet your requirements and/or how much it will cost.

### **Contract Administration**

The Board delegates overall purchasing authority to the Superintendent who shall serve as the district's Chief Procurement Officer. The Chief Procurement Officer must ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders and that purchases and contract awards be made only to responsive and responsible bidders. The Chief Procurement Officer must review all aspects of any contractor bid documents, expenditures, processes, and determine that all expenditures are necessary, reasonable, and allocable.

The Chief Procurement Officer must verify that all food program contracts and procurements are net of all applicable discounts, rebates, and credits. All contractors must maintain records and source documents for all costs, discounts, rebates, and credits.

### **Purchasing Authority Thresholds<sup>5</sup>**

The head cook shall evaluate the procurement needs and forecast the amounts to be purchased so the correct method of procurement will be followed. To ensure adequate checks and balances, the Chief Procurement Officer must approve all purchases but shall not directly make purchases for the District.

To determine the appropriate purchasing authority threshold, an estimate must be made. Estimated price may be based upon previous purchases, market research, a published price list, or asking a vendor for a budgetary estimate.

#### **1. Purchases less than \$10,000**

These purchases are considered a micro-purchase and may be delegated by the Chief Procurement Officer to building level administrators, head cook or business manager. Micro-purchases may be awarded without soliciting competitive quotes if the price is considered reasonable. To the extent feasible, however, the District must distribute micro-purchases equitably among qualified suppliers.

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<sup>5</sup> The District may choose to set a lower purchasing authority threshold than the federal or state standard thresholds. The most restrictive (lowest) threshold must be used.

**2. Purchases \$10,000 to \$50,000**

These purchases are considered an informal/small purchase and may only be made by head cook or business manager who shall develop specifications and solicit no fewer than three vendors to submit oral or written informal bids or proposals. If receiving three bids or proposals is not feasible or practical, the purchaser shall document an explanation and file it with the Chief Procurement Officer who has authority to require the purchaser to seek additional solicitations. The Board has developed criteria for purchasers to evaluate informal bids or proposals (HCAA-BR).

**3. Purchases greater than \$50,000**

These purchases are considered formal purchases and shall be made in accordance with NDCC 15.1-09-34 and 2 CFR 200.320(c). A contract must be awarded through a formal bid process and an invitation for bids or request for proposals shall be published at least once in a newspaper of general circulation in the district, as well as published in a newspaper generally circulated state-wide and posted on the district's website. The invitation for bids or request for proposals may also be published in a regional newspaper. No contract shall be divided for the purpose of avoiding this paragraph.

**Bid Specifications**

Contracts shall not be awarded to any potential vendor who writes any of the bid specifications, the solicitation documents, or any of the contract language. Identical bid specifications and/or request for proposals must be provided to all potential vendors.

**Geographic Preference**

Geographic Preference (advantage based on location) is prohibited with federal funds except for documented Farm to School (Farm to Plate) efforts. The District may choose to apply a geographic preference with the Farm to School program when procuring unprocessed locally grown or locally raised agricultural products only.

**Buy American**

The District must adhere to "Buy American" for the food service program and purchase, to the maximum extent possible, domestic products for use in meals served in the School Nutrition Programs. Exceptions are allowed when:

1. Food preferences may only be met with foreign goods;
2. Insufficient quantity and/or quality is available in the USA; or
3. Domestic cost is significantly higher.

**Debarment and Suspension**

The District must obtain verification regarding debarment, suspension, ineligibility, and voluntary exclusion for all food service contracts awarded, regardless of the dollar amount. To meet this requirement the District may:

1. Include a suspension and debarment statement within the text of all contracts;

## RECOMMENDED

Descriptor Code: HCAF

2. Use the state-approved Debarment and Suspension Certification Form to be included as an attachment to all contracts and bid documents; or
3. Check the Federal Excluded Parties<sup>6</sup> List System and document that the vendor has not been debarred or suspended. Verification must occur prior to a vendor being chosen and before a contract has been offered.

### Standard of Conduct for Food Service Employees

The District maintains the following code of conduct for any employees engaged in award and administration of food service contracts supported by Federal Funds:

1. No employee shall engage in any food service procurement when there is a conflict of interest.
2. No employee shall solicit or accept any gratuities, favors or anything of monetary value from prospective vendors.
3. No employee shall participate in the selection, award or administration of a food service contract when any of the following persons have a financial interest in the firm selected for award:
  - a. The employee;
  - b. Any member of the employee's immediate family;
  - c. People with whom the employee has an affectionate personal relationship;  
or
  - d. An organization which employs or is about to employ any of the above.
4. No employee may divert or purchase food serve products for personal use or for uses other than originally intended for food service use.
5. Employees must behave with the utmost integrity and never be self-serving, be fair in all aspects of the procurement process, be alert to conflicts of interest, and avoid any compromising situations.

Employees found to be in violation of this policy are subject to disciplinary action. Based on the severity of the infraction, the penalties could include a written reprimand to their personnel file, a suspension with or without pay, and/or termination.

### Bid Protest Procedures

The Board shall create a bid protest procedure in board regulations coded HCAF-BR. The procedure provides for an impartial investigation free of conflicts of interest. Nothing in this policy or in the food service procurement bid protest procedure prevents an individual from pursuing redress through state and/or federal law.

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<sup>6</sup> [www.sam.gov](http://www.sam.gov)

**Records Retention<sup>7</sup>**

The District must retain all food service records for at least three years after final payments and/or at least three years after any pending matters have been closed or completed.

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**Complementing NDSBA Templates (may contain items not adopted by the Board)**

- DEBJ, Unauthorized Purchases
- HCAA, Purchasing
- HCAA-BR, Criteria for Evaluating Informal Bids or Proposals
- HCAA-E, Purchasing Laws for Schools
- HCAB, Bidding Requirements & Procedures
- HCAF-BR, Food Service Procurement Bid Protest Procedure
- HCAF-E1, Food Service Procurement Complaint Form
- HCAF-E2, Informal Procurement Log

**End of Manvel School District #125 Policy HCAF ..... Adopted: 2/11/19  
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<sup>7</sup> 2 CFR 200.333