



OFFICE OF FINANCIAL SERVICES
Purchasing

Midland Independent School District
615 W. Missouri Ave., Midland, TX 79701
432-240-1000 • midlandisd.net

CERTIFICATION FORMS FOR CHILD NUTRITION VENDORS

TERMS AND CONDITIONS FOR USDA/TDA PROCUREMENTS AND PURCHASES

The following terms and conditions apply to all procurements and purchases involving federal Child Nutrition funds. In the event of a conflict or inconsistency between the following terms and conditions and any provision of the Agreement, the procurement solicitation issued by MISD, or the portion of Vendor's proposal submitted in response to MISD's procurement solicitation that is satisfactory to MISD, the following terms and conditions shall control.

Market Basket Analysis

MISD reserves the right, in its sole discretion, to use a "Market Basket Analysis" method, as that term is defined by applicable USDA/TDA regulations and guidance. The Market Basket Analysis sample is established to represent 75% of the total estimated value of the Contract. The most recent velocity/sales report(s) from HCDE/CP's current supplier(s) was used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, this list of [100] goods to be purchased under this procurement solicitation and any resulting Contract includes the top [60] goods purchased by dollar volume representing the 75% threshold. Prices for the remaining [40] goods listed in this procurement solicitation should also be included, though they will not be a part of the Market Basket Analysis. The Market Basket Analysis shall not be used for service or equipment contracts/procurement solicitations or for Fee-For-Service Processing contracts.

Material Changes

If a material change (as the term is defined by TDA rules and regulations) to a contract entered into between MISD and Vendor occurs, then the contract will not be renewed upon the conclusion of its term. Upon the expiration of the term, MISD may issue a new procurement solicitation for the goods or services procured under the previously-existing contract. "Material change" for purposes of this section means a change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough, that, had other Vendors known of the change in advance, they may have bid differently and more competitively.

Supplemental Contracts

Supplemental Contracts are entered into pursuant to the piggyback method delineated in the U.S. Department of Agriculture directive SP 05-2017. Such supplemental contracts may be entered into with (among others) other governmental entities, including but not limited to school food authorities. The limitations applicable to such an extension are as follows: the total dollar value of the contract shall not be exceeded by an amount greater than 40% of the original contract value by adding parties to the contract/supplemental contract(s). Should the "piggybacking" result in a material change to an Agreement awarded under this procurement solicitation (referred to hereinafter in this section as the "Agreement"), MISD will proceed under the foregoing section entitled "Material Changes."

New Products

During the Term of an Agreement, additional purchases not included in the original procurement solicitation list and resulting awarded contract may become necessary and benefit MISD. Vendor and MISD agree that the aggregate value of added purchases during each year of the Agreement (if renewed) shall not exceed 10% of the total estimated value of the original Agreement. The total value of the Agreement must be agreed upon, and the dollar value listed in the Agreement and each renewal term of the Agreement (if any). For purposes of this section, the total estimated value of the original Agreement includes all contracts awarded as a result of the procurement solicitation to all Vendors. For the initial Term of an Agreement awarded under this procurement solicitation, the total estimated value of the original Agreement is listed in Solicitation document under Section 4.4. Additions of new products may be included in the awarded Agreement list during the renewal of the Agreement through an amendment to the Agreement, and the total actual value of the Agreement adjusted accordingly. For each renewal term of the Agreement, the actual total cost of the Agreement for the previously



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completed contract year will be the basis for determining the maximum dollar amount (not to exceed 10%) of the additional new product(s) that will be allowed during the next Agreement renewal term.

Bonds

Vendor shall provide all bonds, including bid guarantee, performance bond, and payment bond, as applicable under U.S. Department of Agriculture and/or Texas Department of Agriculture rules.

Buy American Act

MISD participates in the National School Lunch Program and the 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, pursuant to 7 C.F.R. Part 210.21(d). 7 C.F.R. Part 210.21(d) defines a “domestic commodity or product” 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. “Substantially” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically and processed into final end products in the United States.

If applicable, MISD requires Vendor to certify whether its products are “domestic commodity[ies] or product[s]”, as defined by 7 C.F.R. Part 210.21(d). Accordingly, Vendor agrees to provide certification that the food product was processed in the U.S. and the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to MISD, as well as any other documentation requested by MISD to demonstrate that purchases are compliant with the Buy American provision. Vendors’ contracts and invoices must state that all food products will meet the Buy American provisions. When USDA Foods items are manufactured into processed end products, 51 percent of resulting food products must be of United States origin.

If Vendor is repetitively unable to provide domestic food products, MISD may require Vendor to provide evidence that Vendor is capable of fulfilling the terms and conditions of the Agreement and specifically, the Buy American provision. If MISD determines that Vendor is not capable of fulfilling the terms and conditions of the Agreement and/or specifically, the Buy American provision, MISD may terminate its Agreement with Vendor. Vendor shall provide documentation that demonstrates that food products meet the Buy American provision.

Vendor must notify the District if a delivery contains non-domestic products, so the District may approve delivery as an exception to the Buy American provision. Vendor certifies that it will adhere to the notification requirements for the Buy American provision.

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved by MISD, by occurrence (i.e., delivery). Blanket exception approvals are not allowed. The District must determine that the use of a non-domestic food product is appropriate, using the USDA-prescribed questions in making the decision. See “Requirements for an Exception,” TDA ARM Section 17b Buy American, at p. 20 (August 16, 2021). Vendor agrees to provide information to the District that will assist the District in this determination. The decision to purchase or accept delivery of a non-US product must be made by the District. Vendor agrees to comply with all requirements imposed by applicable law, USDA/TDA guidance, and the District concerning Buy American provision exceptions. To be considered for an exception to the Buy American provision, Vendor must submit a good faith request for an exception, certifying that the Vendor reasonably believes that:

- a) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and/or
- b) the costs of a U.S. product are significantly higher than the non-domestic product.



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In the event Vendor or Vendor's supplier(s) are unable or unwilling to certify compliance with the Buy American Provision Vendor's response to the procurement solicitation will be considered non-responsive, and MISD may decide not to purchase from Vendor and/or MISD may terminate the Agreement if Vendor is incapable of fulfilling the terms and conditions of the Agreement, including the Buy American requirements.

Additionally, MISD may require country of origin on all products and invoices submitted for payment by Vendor, and Vendor agrees to comply with any such requirements.

No Guarantee of Quantities

Quantities for purchases paid for with Child Nutrition funds are subject to change for various reasons, which include, but are not limited to the following: USDA commodity allocation(s), variations in student population, production item substitution(s), changes in consumer taste or expectations, pricing, and nutrition regulatory changes.

Records Retention

When Child Nutrition funds are expended by MISD pursuant to this Agreement, Vendor certifies that it will comply with the record retention requirements promulgated by USDA/TDA. Vendor further certifies that Vendor will retain all documentation/ records as required by USDA/TDA for a period of five (5) years after the end of the fiscal year to which the documentation/ records pertain. Vendor further certifies that these records must be accessible to appropriate MISD and federal or state reviewers. See "Records Retention," TDA ARM Section 17 Procurement, at p. 93 (August 16, 2021).

Vendor accepts the terms and conditions set forth above for procurements and purchases involving federal Child Nutrition funds.

CERTIFICATION OF COMPLIANCE WITH BUY AMERICAN ACT

MISD 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, pursuant to the Buy American Act, set out in 7 C.F.R. Part 210.21(d). 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. "Substantially" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically and processed into final end products in the United States.

Vendor certifies that Vendor shall provide food products that meet the Buy American provision. Vendor further certifies that, in compliance with the Buy American provision, its products are "domestic commodity[ies] or product[s]" as defined by 7 C.F.R. § 210.21(d). Vendor further certifies that the food products it supplies are processed in the U.S. and Vendor shall certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to the District.

Alternatively, Vendor certifies that [insert product name] was processed in the U.S. and contains over [insert percent of weight or volume] of its agricultural food component from the U.S.

If Vendor is repetitively unable to provide domestic food products, MISD may require Vendor to provide evidence that Vendor is capable of fulfilling the terms and conditions of the Contract and specifically, the Buy American provision. If MISD determines that Vendor is not capable of fulfilling the terms and conditions of the Contract and/or specifically, the Buy American provision, MISD may terminate its Contract with Vendor.

Vendor shall provide documentation that demonstrates that food products meet the Buy American provision. By signing below, Vendor certifies that it will adhere to the documentation requirements for the Buy American provision.



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Vendor must notify MISD if a delivery contains non-domestic products, so MISD may approve delivery as an exception to the Buy American provision. Vendor certifies that it will adhere to the notification requirements for the Buy American provision.