

# **Wharton ISD**

## **Child Nutrition Food Services Department**

### **Code of Conduct**

**SY 2024-2025**

This Code of Conduct has been created to establish and maintain effective oversight over the Wharton ISD Food Services Department's financial management system that provides reasonable assurance that the Wharton ISD Food Services Department is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award and;

To establish and maintain effective oversight over those definitive actions related to the procurement process, establish standards of ethical conduct and integrity for procurement actions, and provide full and open competition in all procurement actions.

**214 E 3<sup>rd</sup> Street**

**Wharton, TX 77488**

**979-532-6243**

**Wharton ISD – Child Nutrition Food Service Department  
Code of Conduct**

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

The following Code of conduct shall govern the performance, behavior and actions of the Wharton ISD Food Services Department, including employees, directors, officials, or agents who are engaged in any aspect of procurement, including – but not limited to – purchasing goods and services; awarding contracts; or the administration and supervision of contracts.

**Code of Conduct**

- No employee, directors or agent of the Wharton ISD Food Services Department shall participate in the selection, award or administration of a bid or contract supported by federal funds if a conflict of interest is real or apparent to a reasonable person.
- Conflicts of interest may arise when any employee, directors or agent of the Wharton ISD Food Services Department has a financial, family or any other beneficial interest in the vendor selected or considered for an award.
- No employee, directors or agent of the Wharton ISD Food Services Department shall award contracts to, or show favoritism toward a member of his/her immediate family, spouse's family or to any company, vendor or concern who either employs or has any relationship to a family member; or award a contract or bid which violates the spirit or intent of Federal, State and local procurement laws and policies established to maximize free and open competition among qualified vendors. Those circumstances where interests, financial or otherwise, are not substantial or are within the limits of applicable Federal, State and local laws and the policies and procedures of the Wharton ISD, the Superintendent's Cabinet shall determine whether the conflict is material under the circumstances.
- The Wharton ISD Food Services Department employees, directors, and agents will not solicit gifts, including but not limited to travel packages or other incentives, and/or donations from prospective contactors. However, incentive language may be included as part of the competitive procurement (formal bid and request for proposal) solicitation language to acquire the most favorable terms for the operation and benefit of the non-profit food service account. Such incentives include but are not limited to volume rebates, timely payment discounts, program promotion assistance, upfront savings, etc...

## **Conflicts of Interest**

Wharton ISD employees must not solicit or accept gratuities, favors, or anything of value to perform improper financial actions, including actions related to procuring contractors or parties to subcontracts. When this occurs, there is a conflict of interest.

A conflict of interest is *any action that allows a person to benefit at the expense of the public interest or the expense of his or her employer*. A conflict of interest may be real or apparent, i.e., a conflict of interest does not have to be acted upon to be considered a conflict of interest.

A real or apparent conflict of interest occurs in situations such as the following:

- Wharton ISD employee has a financial or other interest in a business being considered for a contract.
- Wharton ISD employee receives a tangible personal benefit from a business being considered for a contract.
- Wharton ISD employee has a personal relationship or friendship with a business being considered for a contract.
- Wharton ISD employee is employed by, about to be employed by, or is seeking employment from a business being considered for a contract.

Wharton ISD will consult with their attorney or legal counsel if there is a question about whether a specific situation is a conflict of interest.

Wharton ISD's "nominal value" may be no more than the value of a cup of coffee. Acceptance of such offerings is highly recommended against, but Wharton ISD is aware that sometimes such offerings are unavoidable. It is required that all vendors be informed by the district staff that such offerings are not allowed.

Wharton ISD considers all "tangible benefits," as defined below but not limited to, to be a conflict of interest.

- Offering a special item at a much lower price than the price structure for a current contract.
- Offering an item not presently used by the CE at a special price that is below market value.
- Offering an incentive, such as equipment or other prizes for purchasing items.
- Allowing staff to make purchases from a CE-procured contract.

## **Incentives, Gratuities, or Kickbacks**

In accordance with the State of Texas Department of Agriculture (TDA) "Administrative Review Manual" (ARM) Section 16, 16.18, Wharton ISD Food Services Department employees; officials; agents acting on the Wharton ISD Food Services Department behalf; any member of the immediate family of the Wharton ISD Food Services Department employee, officer, or agent acting on the Wharton ISD Food Services Department behalf; or business partner of the employee, officer, or agent acting on Wharton ISD Food Services Department behalf cannot accept anything of value from a vendor. Incentive,

gratuities, or kickbacks include, but are not limited to, personal gifts or gratuities that may be construed to have been given to influence the purchasing process.

Although such practices may be accepted in the private sector, giving and receiving gifts in the public sector may constitute a violation of law. Gift to a Public Servant is a Class A misdemeanor offense if the recipient is a government employee who exercises some influence in the purchasing process of the governmental body.

A Wharton ISD Food Services Department employee or former employee must not knowingly use confidential SNP information for the actual or anticipated personal benefit or benefit for any person or entity.

Wharton ISD will apply disciplinary actions (as listed below) for violations of above stated standards by Wharton ISD Food Services Department employees, officers, or agents acting on the Wharton ISD Food Services Department behalf.

“Wharton ISD” will apply the following disciplinary actions:

1. 1<sup>st</sup> Offense: Documented “verbal” reprimand and review Code of Conduct. Two district staff will be present and sign document as witnesses.
2. 2<sup>nd</sup> Offense: Written reprimand. Two district staff will be present and sign document as witnesses.
3. 3<sup>rd</sup> Offense: Termination.

Wharton ISD Food Services Department will provide guidance to each employee, officer, or agent acting on the Wharton ISD Food Services Department’s behalf at the time of hire on how to avoid undue influence. Wharton ISD Food Services Department will offer training and provide all employees, officers, and agents acting on behalf of Wharton ISD Food Services Department a copy of Wharton ISD’s Employee Manual that addresses professional and ethical standards.

Wharton ISD Food Services Department requires any employee, officer, or agent acting on behalf of Wharton ISD Food Services Department to disclose in writing any possible situations where there is an appearance of incentives, gratuities, or kickbacks being received.

### **Benefits Received**

Wharton ISD Food Services Department employees; officials; agents acting on the Wharton ISD Food Services Department behalf; any member of the immediate family of the Wharton ISD Food Services Department employee, officer, or agent acting on the Wharton ISD Food Services Department’s behalf; or business partner of the Wharton ISD Food Services Department employee, officer, or agent acting on Wharton ISD Food Services Department’s behalf must not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

When incentives are offered by the contractor and accepted by an individual, the incentive must become the property of Wharton ISD Food Services Department. Under no condition can the incentive become the property of an individual.

### **Conflicts of Interest, Other Individuals or Entities**

Wharton ISD defines “other” as the following but not limited to:

- Agent
- Business
- Consultant
- Contractor
- Cooperative
- Distributor
- Food Processor
- Food Service Management Company (FSMC)
- For Profit Organization
- Nonprofit Organization
- Third party
- Vendor

“Wharton ISD” will communicate its expectations and applicable procedures related to program integrity to individuals and entities acting on Wharton ISD’s behalf. “Wharton ISD” will review all solicitations, agreements, contracts, and other communications prepared on their behalf to ensure compliance with all Federal and State requirements and regulations.

### **Certification Regarding Lobbying**

Lobbying certification requirements are applicable to grants, sub-grants, cooperative agreements, and contracts exceeding \$100,000 in federal funds.

Wharton ISD Food Services Department uses the following procedures

1. **Documentation:** Wharton ISD Food Services Department will take actions to ensure that the proper documentation is prepared, shared as required, and retained.
2. **Use of Funds:** Wharton ISD Food Services Department requires that federal funds must not be paid by or behalf of the Wharton ISD Food Services Department to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

### **Debarment and Suspension**

Wharton ISD and their subcontractors must not make or permit any award, sub-award, sub-grant, or contract with an individual or entity that is debarred or suspended or is otherwise excluded from or

ineligible for participation in federal assistance programs, per the TDA Administrative Review Manual (ARM), Section 16.20.

- Wharton ISD Food Services Management Department will include the following debarment and suspension certification in every written agreement with subcontractors:

*“{name of subcontracting organization} certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency or by the State of Texas. {name of subcontracting organization} shall immediately provide written notice to Wharton ISD Food Services Management Department if at any time the {name of subcontracting organization} learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Wharton ISD may rely upon a certification of a subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless it knows that the certification is erroneous.*

- Wharton ISD Food Service Management Department will require the subcontractor to sign and submit the TDA form entitled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts (H2048)12” and maintain the signed form with its contract record.
- Wharton ISD Food Service Management Department will print the page from the System for Award Management (SAM) which indicates the subcontractor is not presently debarred or otherwise excluded from participation in the contract by any federal department or agency or by the State of Texas and will maintain that document on file with the contract documents. The System for Award Management can be accessed at [www.sam.gov/portal/SAM/#1](http://www.sam.gov/portal/SAM/#1)

### **Staff Purchase of Items on Awarded Contracts**

Wharton ISD Food Service Management Department does not allow any employee, officer or agent acting on behalf of Wharton ISD Food Service Management Department to take advantage of Wharton ISD Food Service Management Department’s procurement by purchasing off an awarded contract.

Per the ARM, Section 16.22, Confidentiality and Program Integrity, this type of activity as actually accepting the cash difference between the bid or discount price and the amount the individual would have paid for the item in the regular retail market. This is a financial incentive. When an individual pay for the purchase, the payment does not remove the financial incentive. Even if the contractor were to charge retail price, the individual would still be receiving the convenience of a personal delivery and would be accepting a favor from the contractor—therefore, this is an unallowable practice.

### **Contracting with Persons and Companies for Assistance in Developing a Solicitation**

Per the ARM, Section 16.22, Confidentiality and Program Integrity, when acquiring goods and services, contracting entities (CEs) may contract with agents or companies that provide technical information in drafting procurement specifications and/or technical requirements. This provision is intended to encourage program administrators to obtain information from as many sources as possible to assist them in drafting procurement documents.

- **Potential Offers or Interested Parties Involved in Developing a Solicitation**  
Wharton ISD Food Service Management Department will not accept a contractor or other interested party's offer if the contractor or other interested party assisted with or drafted the procurement specifications and/or technical requirements, procedures, or documents.

### **Food Taken from Schools**

Wharton ISD Food Service Management Department does not allow any employee, officer, or agent acting on behalf of the Wharton ISD Food Service Management Department to take food or leftover food (including milk) from the premises for personal use, personal gain, or benefit to another person or entity.

### **Reporting of Fraud, Bribery, and Gratuity Violations**

"Wharton ISD" will report, in writing to TDA, all violations of federal criminal law – fraud, bribery, or gratuity.

*The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in CFR 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).*

"Wharton ISD" defines fraud as:

*Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of \$100 or more, be fined no more than \$25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.*