


Ozark City Schools



Procurement Plan for Child Nutrition Programs

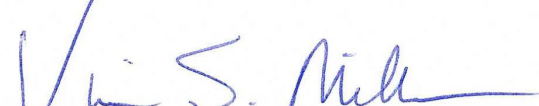
This procurement plan will be implemented on **October 12, 2023** and from that date forward until amended. All procurements must adhere to free and open competition. Source documentation must be available to determine open competition, the reasonableness, and the allocation of costs.



Superintendent
Ozark City Schools

10/12/2023

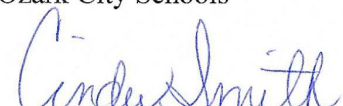
Date



Chief School Financial Officer
Ozark City Schools

10/12/23

Date



CNP Director
Ozark City Schools

10/12/23

Date



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Ozark City Schools

SECTION I - PROCUREMENT PLAN GENERAL REQUIREMENTS

- A. This plan is adopted as a condition of Ozark City Schools participation in the USDA Child Nutrition Programs. Ozark City Schools uses procurement procedures that reflect state and local law, while also ensuring compliance with applicable federal law.
- B. The Purchasing Department is responsible for overseeing procurement that requires a formal/informal bid. The CNP Director is responsible for overseeing procurement for micro purchasing and any equipment that falls at or below 5,000. This responsibility includes, but is not limited to, the responsibilities set forth below:
 - 1. Ensures that all district procurement transactions are conducted on a manner that provides full and open competition in accordance with federal law.
 - 2. Manages contracts and oversees vendors and/or ensuring that vendors perform in accordance with the terms, conditions, and specifications of vendor contracts and/or purchase orders.
 - 3. Ensures that vendors who develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are *excluded* from competing for such contracts and/or purchase orders.
 - 4. Ensures that all contractual and administrative issues arising out of procurements for the Ozark City Schools' food service department are handled in accordance with good administrative practice and sound business judgment.
 - 5. Ensures that all sufficient records detailing Ozark City Schools CNP procurement history, as well as the procurement history of all other entities procuring on behalf of CNP, are maintained.
 - a. The records maintained for contracts include, at a minimum, the following records:
 - 1) Rationale for methods of procurement
 - 2) Selection of procurement type
 - 3) Selection or rejection of vendor
 - 4) Basis for contract price
 - b. These records are maintained for at least seven (7) years after submission of the final claim for Reimbursement for the fiscal year or longer if otherwise required by law.
 - 6. Ensures that the LEA maintains policies and/or procedures that govern the conduct of employees who are engaged in the selection, award, and administration of contracts for the SFA. These policies and procedures can be found in the Central Office. These policies and procedures meet the minimum requirements set forth in federal law.
 - 7. The following conduct will be expected of all persons who are engaged in the awarding and administration of contracts supported by Child Nutrition reimbursement funds. These written standards of conduct include:
 - a. No employee, officer, or agent shall purchase or establish a contract if a conflict of interest, real or apparent, would be involved. Conflicts of interest arise when one of the following has a financial or other interest in the firm selected for the award:

1. The employee, officer, or agent;
 2. Any member of the immediate family;
 3. His or her partner;
 4. An organization which employs or is about to employ one of the above.
- b.** Employees, officers, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Failure of any employee to abide by the stated code of conduct could result in a fine, or suspension, or both, or dismissal.
8. Regardless of procurement method, the following factors will be determined regarding the allowance of costs:
- a) Be necessary and reasonable for proper and efficient administration of the program(s)
 - b) Be allocable to federal awards applicable to the administration of the programs(s)
 - c) Be authorized and not prohibited under state and local laws
4. Purchasing will be conducted at the most restrictive procurement threshold:

	Federal Procurement Thresholds	Ozark City Schools Procurement Thresholds (input)
Micro-purchasing	Less than \$10,000	Less than \$10,000
Equipment	Over \$5,000	Over \$5,000
Small/Informal	Less than \$40,000	Less than \$40,000
Formal	At least or greater than \$40,000	At least or greater than \$40,000

5. All staff conducting purchasing will be trained on the procurement procedures.

SECTION II – MICRO PURCHASING

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

1. Purchases will not be separated into 2 or more purchases to meet or be below the \$10,000 threshold.
2. The price quotes will not be required. Competition is not required.
3. When practicable, micro-purchases will be distributed equitably among qualified suppliers.
4. Documentation of purchases will be kept and maintained for 3 years plus the current year.
5. The CNP Director will be responsible for documentation of purchase.

SECTION III –PURCHASING EQUIPMENT

If the amount of purchases for equipment is greater than \$5,000, the following procedure will be used.

1. Written specifications will be prepared and provided to vendors.
2. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of two vendors shall be contacted.
3. The price quotes will receive appropriate confidentiality before award.
4. Ozark City Schools will seek prior approval from the Child Nutrition Director at the Alabama State Department of Education (ALSDE) by completing the Equipment Request Form. The request should be submitted and pre-approval granted from ALSDE *before* issuing bids for equipment. The school board cannot vote to approve any purchases of \$5,000 or more without pre-approval from ALSDE.
5. Quotes will be awarded by the Purchasing Department. It is not the policy of the Ozark City Schools to purchase on the basis of low bid only. Quality, conformity with specifications, purpose for which required, terms of delivery, transportation charges, and dates of delivery are factors which may be used to determine the low responsible bidder. Bidders must abide by the provisions of the Americans with Disabilities Act of 1990 in order to provide goods or services to the Ozark City Board of Education.
6. The CNP Director and/ or Purchasing 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*.
7. The CNP Director will be responsible for documentation that the actual product specified is received.

Equipment means 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 non-Federal entity for financial statement purposes, or \$5,000. See also §§200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.

SECTION IV – SMALL PURCHASES

If the amount of purchases for items is greater than \$10,000 and less than \$40,000, Small Purchase Procedures must be followed. There are two methods of Small Purchasing allowed, either Quotes and/or a Market Basket Study. Quotes documented from an adequate number of qualified sources will be required.

Purchases over \$10,000 but below \$40,000

Method 1: Quotes

1. Written specifications will be prepared and provided to the vendor.
2. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of two vendors shall be contacted.
3. The CNP Director will be responsible for contacting potential vendors when price quotes are needed.
4. The price quotes will receive appropriate confidentiality before award.
5. Quotes will be awarded by the CNP Director. It is not the policy of Ozark City Board of Education to purchase on the basis of low bid **only**. Quality, conformity with specifications, purpose for which required, terms of delivery, transportation charges, and dates of delivery are factors which may be used to determine the low responsible bidder. Bidders must abide by the provisions of the Americans with Disabilities Act of 1990 in order to provide goods or services to the district.
6. The CNP Director 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**.
7. The CNP Director will be responsible for documentation that the actual product specified is received.
8. Any time an accepted item is not available, the CNP Director 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.
9. Purchasing will be based on the following criteria:
 - a) Price, Example: quality, delivery, service, etc.
 - b) Conformity to Bid / Request Requirements
 - c) If two bids are equal, consideration will be given to the vendor which was last awarded a bid from Ozark City Schools

SECTION V – FORMAL PROCUREMENT

Purchases \$40,000 or greater

1. If the amount of purchases is \$40,000 or greater, formal procurement procedures will be used as required by 2 CFR Part 200.318-326, formerly 7 CFR §3016.36. The Purchasing department is responsible for procuring goods and/or services for Ozark City Schools using formal procurement. Responsibilities include, but are not limited to, the following:
 - Ensuring that contracts are awarded to the responsible bidder / proposer whose bid or proposal is responsive to the solicitation and is most advantageous to Ozark City Schools.
 - Ensuring that, when weighed criteria is used as part of the solicitation, a weighted evaluation sheet is provided to each bidder in the initial bid document materials; price and other factors are considered with price receiving the highest weight; and a firm fixed price or cost reimbursable contract is awarded following evaluation and / or negotiation (as applicable.)
 - Ensuring that the bid tabulation or the evaluation criterion score sheet is signed signifying a review and approval of the selections.
 - Monitoring the formal procurement system to ensure compliance with applicable laws.
 - Ensuring that all procurement documentation relating to formal procurement is maintained.
 - Ensuring compliance with the Buy American Provision for example agricultural products. .
 - Ensuring that a vendor obtains, in advance, written approval for any non-domestic agricultural product supplied to Ozark City Schools.
 - Ensuring that full documentation is received documenting why an accepted item is unavailable.
 - Ensuring that vendor documentation is reviewed and audited before Ozark City Schools selects an acceptable alternative.
 - Selects an acceptable alternative when a product is not available.
 - Ensuring that the solicitation is advertised by the Purchasing department to publicize the SFA's intent to purchase needed items.
 - An advertisement is required for all purchases over the district's small purchase threshold of \$40,000. The announcement will contain a:
 - General description of items to be purchased
 - Deadline for submission of questions and the date written responses will be provided including addenda to bid specifications, terms, and conditions as needed
 - Date of pre-bid meeting, if provided, and if attendance is a requirement for bid award
 - Deadline for submission for bids or proposals; and
 - Address of location where complete specifications and bid / proposal forms may be obtained.
 - Ensuring that advertisements run for 1 business days.
 - Ensuring that vendors are given the same opportunity to bid on the same product specifications.

- Ensuring that purchase conditions are clearly defined in the solicitation.
 - Ensuring that the initial procurement solicitation and the final awarded contract include all required contract language and meets the requirements of local, state, and federal law.
 - The developer of written specifications or descriptions for procurements will be ***prohibited*** from submitting bids or proposals for such products or services.
2. All bids / contracts must contain provisions covering the following, as applicable:
- Address terms of termination for cause and for convenience and the manner by which it will be effected and the basis for settlement.
 - Bid / contracts at least \$40,000 contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the following:
 - Clean Air Act (42 U.S.C. 7401-7671q)
 - Federal Water Pollution Control Act as amended (22 U.S.C. 1251-1387)
 - Buy American provision (7 CFR §210.21)
 - Equal Employment Opportunity (41 CFR §60)
 - Davis-Bacon Act (40 U.S.C. 3141-3148)
 - Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
 - Rights to Inventions Made Under a Contract or Agreement (37 CFR §401.2)
 - Debarment and Suspension (Executive Orders 12549 and 12689)
 - Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
 - Procurement of Recovered Materials (See §200.322)
 - Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)
 - 200.318 General procurement standards – Code of Conduct
3. Because of the potential for purchasing more than \$40,000, it will be the responsibility of the CNP Director to document the amounts to be purchased so the correct method of procurement will be followed.

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:

An announcement of an ***Invitation for Bid (IFB) or a Request for Proposal (RFP)*** will be sent to vendors, posted on Ozark City Schools website, and posted on the district bulletin board to publicize the intent to purchase needed items. The advertisement for bids/proposals or legal notice will be run for 10 business days. The IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the procurement document:

- Contract period
- Ozark City Schools are responsible for all contracts awarded (statement)
- Date, time, and location of bid opening
- How vendor is to be informed of bid acceptance or rejection
- Delivery schedule
- Set forth requirements (terms and conditions) which bidder must fulfill in order for bid to be evaluated
- Benefits to be entitled if the contractor cannot or will not perform as required

- Statement regarding the return of purchase incentives, discounts, rebates, and credits to the non-profit Child Nutrition account
- Contract provisions as required in Appendix II for 2 CFR Part 200, formerly 7 CFR Part 3016.36(i)
- Contract provisions as required in 7 CFR Part 210.21(f) for all cost reimbursable contracts

- Procuring instrument to be used are purchase orders from firm fixed prices after formal bidding
- Price adjustment clause (escalation/de-escalation) based on appropriate standard or cost index (Consumer price index, or other as stated in terms and conditions for pricing and price adjustments)

- Specific bid protest procedures including contact information of person and address and the date by which a written protest must be received
- Provision requiring access by duly authorized representatives of the Ozark City Schools, State Agency, United State Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts
- Method of shipment or delivery upon contract award
- Provision requiring contractor to maintain all required records for ***three*** years after final payment and all other pending matters (audits) are closed for all negotiated contracts

- Provision requiring the contractor to recognize mandatory standards/policies related to energy efficiency contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act (PL 94-165)
- Signed statement of non-collusion

- Signed Debarment/Suspension Certificate or statement included in contract or copy of Excluded Parties List System (EPLS).
- Affidavit of Alabama Immigration Compliance Signature Page
- Notice of Alabama Immigration Law Compliance Requirements
- E-Verify Memorandum of Understanding
- Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions
- General Procurement Standards – Code of Conduct 200.318

Specifications and estimated quantities of products and services prepared by Ozark City Schools and provided to potential contractors desiring to submit bids/proposals for the products or services requested.

- If any potential vendor is in doubt as to the true meaning of specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the CNP Director and date specified.
- The CNP Director will be responsible for securing all bids or proposals.
- The CNP Director will be responsible to ensure all Ozark City Schools procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.

The following criteria will be used in awarding contracts as a result of bids/proposals.

- Price
- Conformity to Bid Requirements (Ex.: quality, delivery, service, etc.)
- If two bids are equal, consideration will be given to the vendor which was last awarded a bid from Ozark City Schools

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.

- The contracts will be awarded to the responsible bidder/proposer whose bid or proposal is responsive to the invitation and is most advantageous to the district, price, and other factors considered. Any and all bids or proposals may be rejected in accordance with law.
- The CFSO and CNP Director are required to sign on the bid tabulation of competitive sealed bids or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.
- The CFSO and CNP Director reviews the procurement system to ensure compliance with applicable laws.
- The CNP is responsible for documentation that the actual product specified is received.
- Any time an accepted item is not available, the CNP Director will select the acceptable alternate. The contractor must inform the CNP Director within five (5) days when a product is not available. In the event a non-domestic agricultural product is to be provided to Ozark City Schools, the contractor must obtain, in advance, the written approval of the product. The district must comply with the Buy American Provision.

- Full documentation as to the reason an accepted item was unavailable, and to the procedure used in determining acceptable alternates, will be available for audit and review. The person responsible for this documentation is the CNP Director or Director of Purchasing.
- The CNP Director is responsible for maintaining all procurement documentation.

SECTION VI - NON-COMPETITIVE NEGOTIATION

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 may be used only when one or more of the following circumstances apply:

- 1) The item is available only from a single source,
- 2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation, or
- 3) After solicitation of a number of sources, competition is determined inadequate.

The CNP Director is responsible for handling non-competitive negotiations. Responsibilities include, but are not limited to the following:

1. Written Specifications will be prepared and provided to the vendor.
2. The CNP Director 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. A record of non-competitive negotiation purchases shall be maintained by the CNP Director. The record of non-competitive purchases shall include, at a minimum, the following:
 - item name
 - dollar amount
 - vendor, and
 - reason for non-competitive procurement
4. The CNP Director will be responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive negotiation are met.
 - 1) Ozark City Schools agrees that the reviewing official of each transaction will be the CNP Director.
 - 2) Payment will be made to the vendor when the contract has been met and verified and has met the procedures for payment. (if prompt payment is made, discounts, etc. are accepted.)
 - 3) Specifications will be updated as need.

SECTION VII – EMERGENCY PURCHASING

The CNP Director is responsible for handling emergency purchases. Responsibilities include, but are not limited to:

- Ensuring that written specifications will be prepared
- Ensuring that the actual product or service specified is received
- Ensuring products meet the Buy American Provision
- Ensuring that a record of the emergency purchase procedure is maintained and available for audit and review. At a minimum, the following emergency procurement procedures shall be documented:
 - item name
 - dollar amount
 - vendors contacted, and
 - reason for emergency
- Ensures all emergency procurements shall be approved by the Superintendent of Ozark City Schools
- Submits Equipment Request Form to ALSDE for approval
- Maintains all documents related to the emergency for Seven 7) years after final payment.

SECTION VIII – GENERAL GUIDELINES FOR BIDDERS

1. **All bids are to be sealed.** Envelopes containing bids shall be marked on the outside. An envelope is enclosed to facilitate each Bidder's maintaining compliance with this requirement. All bids shall be mailed or hand delivered in accordance with the foregoing instructions. The Ozark City Board of Education, at its sole discretion, reserves the right to consider any Bids which are improperly labeled (in accordance with this provision) deficient. Any such bids may be declared non-responsive and shall not be considered.
2. **Bids shall be opened in accordance with the foregoing instructions.** Bids may be hand delivered or mailed; however, it is the Bidder's responsibility to ensure bids are received not later than the stated time. Bids received after this time shall be declared non-responsive.
3. **Each bid shall be submitted on the Bid Proposal Form furnished by the Ozark City Board of Education.** Bids submitted in any other form, format or on any other medium shall not be considered.
4. By submitting a bid(s) pursuant to this Invitation to Bid, Bidders agree to and accept the terms and conditions specified herein.
5. All bids shall be typewritten or prepared using a text editor.
6. **F.O.B.:** Unless otherwise noted herein, the F.O.B. point shall be the Board's designated location(s), Ozark, Alabama. As applicable, successful Bidders shall bear all risk of loss for all merchandise covered by this Invitation until said goods have been delivered to the designated location.
7. The omission of explicit reference or enumeration from this document to rights otherwise accorded to the Ozark City Board of Education in accordance with Federal Law, the Alabama Competitive Bid or other Laws, or Local laws/ordinances, is not intended to affect and shall not be construed to affect a waiver of said rights by the Ozark City Board of Education.
8. All bids submitted must be valid for a minimum period of 60 days after the bid opening date.
9. **Bid Bond.** Bidders may be requested to submit a bid bond in an amount equal to ten percent (10%) of the Bid's total contract value. If requested and the bidder fails to submit the Bid Bond along with its bid, the bid shall not be considered. All Bid Bonds shall be returned to Bidders after contract award has been executed by the successful Bidder and the Ozark City Board of Education.
10. **Bid Evaluation.** The Ozark City Board of Education shall evaluate this bid based on specified criteria herein in accordance with the Alabama Competitive Bid Law. The resultant contract shall be awarded to the Lowest Responsible Bidder for all items as specified herein, taking into consideration, among other factors, historical performance commensurate with services requested herein, conformity with specifications set forth herein, and the terms and

conditions of delivery of service(s). The right is reserved by the Ozark City Board of Education to award the bid on a categorical or item-by-item.

11. Effective Date. The Effective Date of any contract(s) resultant from this Invitation shall be the day immediately following date upon which the Ozark City Board of Education, or its controlling entity, approves the award of this bid.

12. Initial Contract Term and Expiration. The Initial Contract Term shall continue in effect from the Effective Date for a One-year period and shall expire on the last day of the Contract Term unless the Ozark City Board of Education and the successful bidder mutually agree to exercise the Contract Extension Option(s) stipulated in Provision 13 below.

13. Contract Extension Option. Upon mutual agreement, the Parties, may elect to extend the Initial Contract Term stipulated in Provision 12 for a period of up to 4 years, in one-year increments. Such extension(s) shall be contingent on successful Bidder's consent to honor its original bid prices pursuant to all terms, conditions, and stipulations specified herein.

14. Contract Termination. The Ozark City Board of Education reserves the right to terminate the contract award for non-performance or a material breach of stipulated terms and conditions set forth in this Invitation to Bid. This applies to General Procurement Standards-Code of Conduct, Debarment, Required Federal Provisions for Procurement in Child Nutrition Programs and Title 7: Agriculture PART 210 National School Lunch Program Subpart E-State Agency and School Food Authority Responsibility 210.21 Procurement.

In the event a contract is terminated for non-performance, the Ozark City Board of Education reserves the right to award this bid to the next Lowest Responsible Bidder pursuant in accordance with Alabama Code Section 16-13B-1 et. seq (Alabama Competitive Bid Law). Procedures for termination of contracts. 1. Verification. Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached. GPPB Resolution No. 018-2004 dated December 22, 2004, Annex "A" Page 4 of 6 Annex "A" 2. Notice to Terminate. Upon recommendation by the Implementing Unit, the Head of the Procuring Entity shall terminate contracts only by a written notice to the Supplier/Contractor conveying the termination of the contract. The notice shall state: a) that the contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same; b) the extent of termination, whether in whole or in part; c) an instruction to the Supplier/Contractor/Consultant to show cause as to why the contract should not be terminated; and d) special instructions of the Procuring Entity, if any. The Notice to Terminate shall be accompanied by a copy of the Verified Report. 3. Show Cause. Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier/Contractor/Consultant shall submit to the Head of the Procuring Entity a verified position paper stating why the contract should not be terminated. If the Supplier/Contractor/Consultant fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the Procuring Entity shall issue an order terminating the contract.

15. Beason-Hammon Alabama Taxpayer and Citizen Protection Act (Act No. 2011-535). Alabama laws require that, as a condition for the award of a contract by a school Ozark City Board of Education to a business entity or employer with one or more employees working in Alabama, the business entity or employer must provide documentation of enrollment in the E-Verify program. During the performance of the contract, the business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The contractor's E-Verify Memorandum of Understanding MAY be included with the bid or at a time determined and requested by the Purchasing Department to facilitate approval by the Montgomery County Ozark City Board of Education. Bidders who do not believe these requirements are applicable to their entity should include an explanation justifying such exemption. An entity can obtain the E-Verify Memorandum of Understanding upon completion in the E-Verify enrollment process located at the federal web site www.uscis.gov/everify. The Alabama Department of Homeland Security (<http://immigration.alabama.gov>) has also established an E-Verify employer agent account for any business entity or employer with 25 or fewer employees

17. Electronic Communication Disclaimer. The Ozark City Board of Education makes no warranties of any kind, whether expressed or implied, that a bidder's Electronic-Mail (Email) shall not be intercepted by the Ozark City Board of Education's network firewall, which is utilized to ensure network security. Bidder assumes all risks of communication relying solely on its E-mail or facsimile. The Ozark City Board of Education shall not be responsible for any damages suffered due to loss of data resulting from delays, non-deliveries, mis-deliveries, or service interruptions caused by the Bidder's own negligence, user errors, or omissions.

18. Act No. 2012-491. Act No. 2012-491. Requires school Ozark City Board of Educations to include the following clause in all contracts or agreements: "By signing this contract, the contracting Parties affirm, for the duration of the agreement, that they shall not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting Party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."

19. Bid Amendment. The Ozark City Board of Education reserves the right to issue a Bid Amendment necessary to clarify, modify, or support the information in this Invitation to Bid as stipulated herein. Said Bid Amendment shall be considered part of this Invitation to Bid as though it had been issued at the same time and shall be incorporated integrally therewith. Where provisions of modified or revised information differ from those of the original bid documents, the Bid Amendment shall govern and take precedence. **BIDDERS MUST SIGN THE BID AMENDMENT AND SUBMIT IT WITH THEIR BIDS.** An issuance of a Bid Amendment to this Invitation to Bid shall be communicated to Bidders by the effective posting of said Bid Amendment to the Board's website: <http://www.ozarkcityschools.net>. No other changes or revisions, regardless of source, shall be valid or binding.

20. Bid Addendum. The Ozark City Board of Education reserves the right to issue a Bid Addendum necessary to clarify, modify, or support the information in this Invitation to Bid as stipulated herein. Said Bid Addendum shall be considered part of this Invitation to Bid as though

it had been issued at the same time and shall be incorporated integrally therewith. Where provisions of the supplementary information differ from those of the original bid documents, the Bid Addendum shall govern and take precedence. **MUST SIGN THE BID ADDENDUM AND SUBMIT IT WITH THEIR BIDS.** An issuance of a Bid Addendum to this Invitation to Bid, shall be communicated to Bidders by the effective posting of said Bid Addendum to the Board's website: <http://www.ozarkcityschools.net>. No other changes or revisions, regardless of source, shall be valid or binding.

21. Tax Exempt Status. Ozark City Board of Education is exempted from the payment of Alabama Sales and Use Tax as accorded by Section 40-23- 4(11), Code of Alabama 1975 as amended, and as further clarified in Alabama Department of Revenue Regulation 810-6-3-.47.03.

22. Governing Law and Venue. This solicitation shall be governed by and construed in accordance with the laws of the State of Alabama. Bidder agrees and consents to the exclusive jurisdiction of the courts in the State of Alabama for all purposes regarding this solicitation, and further agrees and consents that venue of any action hereunder shall be exclusively in the County of Dale, Alabama.

23. Alternate Bids. This Invitation is not an advertisement for "Alternate Bids". All bids that contain "Alternate Bids" maybe be a basis for disqualification. The Ozark City Board of Education may accept an "Alternative Bid" pursuant to this Invitation.

24. Bid Publication. In accordance with the Alabama Competitive Bid Law, this Invitation is posted on the bulletin Ozark City Board of Education outside of the Office of Procurement located at 860 N US 231, Ozark, Alabama 36360. Additionally, this Invitation is posted on Ozark City Board of Education' website: www.ozarkcityschools.net

25. Non-responsive Bid. The Bidder shall submit bid its proposal strictly in accordance with the requirements and specifications stipulated on the proposed Bid Form as provided herein. The Ozark City Board of Education reserves the right to declare any bid that fails to comply with this provision, a "Non-responsive Bid".

26. Non-responsible Bid. The Ozark City Board of Education reserves the right to declare any bid a "Non-responsible Bid" if it determines, in its sole discretion, that the bid demonstrates the bidder is unable or does not have the capability or capacity to perform the services specified herein.

27. Bid Cancellation. The Ozark City Board of Education reserves the right not to award or to otherwise cancel this Invitation to Bid at any time prior to its stipulated "Public Reading Time/Date".

28. Signature Authorization. A duly authorized officer or designee shall sign with the firm's legal name on the bid form. Obligations assumed by said signature shall be fulfilled in accordance with the specifications, terms, and conditions as prescribed herein.

29. **Invoice Payment Term.** Net 30 (Payment 30 days after invoice date).

30. **Bid Formalities.** As time is of the essence, the Ozark City Board of Education reserves the right to reject any or all responses, bids, and offers, and to waive, at its discretion, any informalities or irregularities involving the bid process or evaluation in order to expedite administrative processes, accommodate minor error, or respond to unforeseen circumstances. However, the following formalities listed below shall not be waived:

30.1 Bids received after the specified bid submission date and time indicated on the bid document AND Bids postmarked prior to bid opening time, but not received, shall not be considered and shall be returned to the bidder unopened.

30.2 Bids received but have not been signed by an authorized signatory, shall be deemed Non-responsive.

30.3 Bids submitted without a corresponding Bid Bond if required, shall be deemed Non-responsive.

31. **Bid Inquiries Deadline.** All inquiries regarding the technical specifications outlined herein shall be emailed to smalone@ozarkcityschools.net not later than the specified date given.

32. **Summary of Bid Inquiries and Responses.** The Ozark City Board of Education shall post a Comprehensive Response of compliant Bid Inquiries to its website www.ozarkcityschools.net

33. **Collusive Agreements (AL Code § 16-13B-5)**

33.1 Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition, by agreement, to bid at a fixed price or to refrain from bidding or otherwise shall render the bids of such bidders void and shall cause such bidders to be disqualified from submitting further bids to the awarding authority on future purchases.

33.2 Whoever knowingly participates in a collusive agreement in violation of this section involving a bid or bids of fifteen thousand dollars (\$15,000) and under shall be guilty of a Class A misdemeanor and, upon conviction, shall be punished as prescribed by law.

33.3 Whoever knowingly and intentionally participates in a collusive agreement in violation of this section involving a bid or bids of over fifteen thousand dollars (\$15,000) shall be guilty of a Class C felony, and upon conviction shall be punished as prescribed by law.

34. **Delivery of Goods.** Bidder shall ensure the delivery of all goods specified herein within 5 days of the receipt of order or agreed upon time by both parties.

35. Procurement Levels. The Ozark City Board of Education makes no representation of warranty, either implied or expressed, regarding future or minimum procurement levels.

36. Termination of Non-appropriation of Funds. Notwithstanding any other provision or stipulation of this Invitation to Bid and resultant Contract, the Ozark City Board of Education shall not be obligated for the successful Bidder's and subsequent Contractor's performance hereunder unless and until Funds for this Contract are appropriated for each future fiscal year. If Funds are not appropriated for Contracted good and/or services prescribed herein, then said Contract shall terminate as of September 30 of the last fiscal year for which funds were appropriated. The Ozark City Board of Education shall notify the successful bidder in writing of any such non-appropriation of funds.

37. Price Escalation. All price increases shall be based on new published manufacturer's selling price for the goods specified herein. Price increase shall be supported by acceptable documentation from the primary mill or raw materials and shall be based on the mill's general increases for all affected accounts within the industry.

38. Required Federal Provisions for Procurement in Child Nutrition Program. Bidder shall review and submit bid proposal based on applicable provisions stipulated in the Appendix A (Required Federal Provisions for Procurement in Child Nutrition Program), and said appendix is hereby incorporated by reference into the Terms and Conditions stipulated in this Invitation to Bid.

SECTION IX – REQUIRED FORMS AND DOCUMENTS FOR BIDS

TECHNICAL SPECIFICATIONS AND BID PROPOSAL FORM (CONTINUED)

Bidder's Name: _____

Requisition Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Toll Free: _____ Fax: _____

E-mail Address: _____ Internet Address: _____

Customer Service Contact _____ Sales Representative _____

Phone: _____ Federal ID#: _____

SPIN Number (E-rate only) _____ SS# if Sole Proprietor: _____

Annual Sales Volume _____ Year Company Established: _____

Contact Person
for Contract Processing: _____ Phone No. _____ E-mail _____

Remit to name and address: (if different from 'Requisition Address' above)

Remittance Address: _____

City: _____ State: _____ Zip: _____

Accounts Receivables' Contact Name: _____

List type of product(s) and/or service(s) with the appropriate Standard Industrial Classification (SIC) for company, if known:

The following information refers to company ownership and shall be used for **informational purposes only**. Contact your Regional or District U.S. Small Business Administration Office if clarification is needed for small or large business classification (As defined by Code of Federal Regulation (CFR) 13 Part 121). SBA's size standards define whether a business entity is small. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS). Failure to respond to this section shall result in your company being classified as a large business.

PLEASE CHECK THE APPROPRIATE STATEMENTS:

This Bidder is a:

- ☐ Women-owned business
(Company shall be 51% or more women- owned, controlled, and operated)
- ☐ Male-owned business
- ☐ Sole Proprietor
(Provide SSN of proprietor)
- ☐ Non-profit business
- ☐ Corporation
- ☐ Partnership

The Bidder is a Qualified Disadvantaged¹ company:

- ☐ Black American
- ☐ Hispanic American
- ☐ American Indian
- ☐ Asian Pacific American
- ☐ Asian Indian American
- ☐ Disabled
- ☐ Other socially / economically disadvantaged designation
- Please specify: _____

¹To be considered a Qualified Disadvantaged entity, the company must be 51% or more owned, controlled, and operated by one or more of the classifications described above.

This Bidder is a:

- ☐ Contractor, please specify type: _____
- ☐ Distributor
- ☐ Manufacturer
- ☐ Manufacturer's Representative
- ☐ Service
- ☐ Retailer
- ☐ Wholesaler
- ☐ Other: _____

Bid Proposal Form

The undersigned certifies signature authority is duly vested by business entity (Bidder) and the information provided herein is correct to the best of his/her knowledge.

Submitted by:

Signature

Date

Official Title

Legibly print full legal name (individual)

Business Entity's Legal Name

Federal ID No. or
Social Security No. (Sole Proprietor)

Business Entity's Trade Name (DBA)

Contact Information:

Street Address (Physical Address)

P.O. Box

City/State/Zip Code

City/State/Zip Code

() _____ Ext. _____
Business Telephone

() _____
Alternate Telephone

E-mail Address

Business Entity's Web Address

Required Federal Provisions for Procurement in Child Nutrition Program

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Title 2: Grants and Agreements PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS Subpart F—Audit Requirements Appendix II to Part 200

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.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(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.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). 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. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. 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”). 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. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or

laborers must include a provision for compliance with 40 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.

(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.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree 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). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—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.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials. 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. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or

the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Title 7: Agriculture PART 210—NATIONAL SCHOOL LUNCH PROGRAM Subpart E—State Agency and School Food Authority Responsibilities §210.21 Procurement.

(d) Buy American—

(1) Definition of domestic commodity or product. In this paragraph (d), the term ‘domestic commodity or product’ means—

(i) An agricultural commodity that is produced in the United States; and

(ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) Requirement.

(i) In general. Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(ii) Limitations. Paragraph (d)(2)(i) of this section shall apply only to—

(A) A school food authority located in the contiguous United States; and

(B) A purchase of domestic commodity or product for the school lunch program under this part.

(f) Cost reimbursable contracts—

(1) Required provisions. 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:

(i) 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;

(ii) (A) 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

(B) 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;

(iii) 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;

(iv) 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;

(v) 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

(vi) 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.

(2) 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.

(g) Geographic preference.

(1) A school food authority participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied;

(2) For the purpose of applying the optional geographic procurement preference in paragraph (g)(1) of this section, “unprocessed locally grown or locally raised agricultural products” means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the

form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

U.S. DEPARTMENT OF AGRICULTURE

**Certification Regarding Debarment, Suspension, Ineligibility,
and Voluntary Exclusion – Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participant's responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is being presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature(s)

Date

**Certification Regarding Debarment, Suspension, Ineligibility, And Voluntary Exclusion,
(continued)**

Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the form in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," "and "voluntarily excluded" as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determined the eligibility of its principals. Each participant may, but is not required to, check the Non-purchase List.
8. Nothing contained in the foregoing shall be construed to require the establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph five of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

§ 200.318 General Procurement Standards – Code of Conduct

11. (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§§ 200.317](#) through [200.327](#).
12. (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
13. (c)
14. (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
15. (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
16. (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
17. (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
18. (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

19. (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
20. (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also [§ 200.214](#).
21. (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
22. (1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
 23. (i) The actual cost of materials; and
 24. (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
25. (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
26. (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

SECTION 10 – NONDISCRIMINATION STATEMENT

Non-Discrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation*), disability, age, or reprisal or retaliation for prior civil rights activity. Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: USDA Program Discrimination Complaint Form from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

*This language was added pursuant to the May 5, 2022, USDA memorandum. However, the inclusion and applicability of this language is currently under challenge in the matter of *The State of Tennessee, et al. v. USDA, et al.*, Case No. 3:22-cv-00257, and may be subject to change.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

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