



# **District**

## **Texas Department of Agriculture**

### **Purchasing Procedures Manual**

#### **FEDERAL GRANTS COMPLIANCE NOTICE**

All purchases shall be in accordance with the District's School Board Policies (CH Legal and Local) and the District's Purchasing Procedures Manual. The district purchasing procedures shall comply with all federal, state, and local procurement requirements, including the new Education General Administration Regulations (EDGAR).

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## OVERVIEW

The Purchasing Department of the Grand Prairie Independent School District is part of the Business Operations Department and responsible for the organization and administration of the purchasing/procurement functions for the district following the authority delegated by the Superintendent and Board of Trustees.

The primary function of the District's Purchasing Department is to meet the product and service needs of the district by:

- Obtaining the best product at the lowest cost to the taxpayer while following all federal, state, and local laws as well as District policies and guidelines.
- Achieving a dependable and prompt delivery for the requesting school or department.
- Promoting competition among bidders.
- Ensuring an equal opportunity for all vendors to secure District business.
- Educating and informing all vendors about District rules, regulations, and methodology that are the basis for bid awards.

As a support organization of the district charged with the acquisition of goods and services requested by instructional and administrative departments, the Purchasing Department will function in a manner consistent with applicable laws, School Board policies, the Uniform Commercial Code and other sound business practices.

The Purchasing Department shares with the Business Office and other fiscal offices the responsibility of expending District funds in such a manner that will meet all requirements of the State, Federal, and District procurement regulations and safeguard the public trust.

Effective purchasing is a cooperative venture between the Purchasing Department and the schools and other departments within the district. The purpose of this manual is to provide guidelines and procedures for the Purchasing Department staff and others involved in the procurement process throughout the district.

Situations will undoubtedly arise that are outside of these procedures. The Purchasing Department staff are available to discuss and/or aid in any special situations or needs and will facilitate a solution in the best interest of the students and staff of Grand Prairie ISD. The purchasing procedures contained in this purchasing manual are intended to follow all applicable laws, policies, and procedures. In case of conflict, the appropriate law or policy shall prevail.

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## GENERAL STANDARDS AND ETHICS

Ethics relating to conflicts of interest, monetary interests in firms conducting business with the district, kickbacks, gratuities, and improper use of a position or confidential information are clearly communicated throughout the district.

Additionally, District personnel should be aware that under the Education Code, Chapter 44.031, as well as other state and federal statutes regarding the expenditure of public funds, there are penalties for violations of purchasing processes which can include criminal prosecution and loss of employment opportunities.

There are certain common standards of ethics which govern the conduct of employees involved in the purchasing function. The fundamental standards for the Grand Prairie ISD purchasing processes are as follows:

- It is a breach of ethics to attempt to realize personal gain through employment with a public school district by any conduct inconsistent with the proper discharge of the employee's duties.
- It is a breach of ethics to attempt to influence any public employee of a district to breach the standards of ethical conduct set forth in this code.
- It is a breach of ethics for any employee of a district to take part directly or indirectly in a procurement when the employee knows:
  - The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.
  - A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment participates in the procurement.
- Gratuities: It is a breach of ethics to offer, give or agree to give any employee or former employee of a school district, or for any employee or former employee of a school district to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government. Acceptance of gratuities may be construed as a criminal offense.

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- In addition, Texas law makes a gift (an item valued at \$50 or more, cash of any amount, or a negotiable instrument of any value) to a public employee a Class A misdemeanor if the employee is someone who exercises some influence in the purchasing process of the governmental body. (Texas Penal Code, 36.09 [d] and [h]). District policy on Conflict of Interest and the reporting requirements can be found under District Board Policy-DBD.  
<https://pol.tasb.org/PolicyOnline/PolicyDetails?key=365&code=DBD#legalTabContent>
  - Kickbacks: It is a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract of a school district, or any person associated therewith, as an inducement for the award of a subcontract or order.
  - Contract Clause: The prohibition against gratuities and kickbacks prescribed above should be conspicuously set forth in every contract and solicitation, therefore.
  - It is a breach of ethics for any employee or former employee of a school district knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

*Local Government Code, Chapter 176* provides information regarding conflict-of-interest statements to be filed by vendors and certain school district employees. Refer to the [Texas Ethics Commission](#) website for additional information and sample forms.

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## PURCHASING PROCESS

Texas Education Code, Chapter 44 defines the methods of procurement that school district uses based on the level of expenditure during a twelve-month period. The Purchasing Department looks at All expenditures in total, which means all district locations are one unit.

There are various categories of purchases including personal property, services, maintenance, construction, and real property.

Texas Education Code defines Personal property as including, but not limited to, any item or thing that can be moved from one location to another or is consumable and does not include real property such as land, buildings, and repair or renovations to buildings.

Services can include both professional and non-professional services. Texas Education Code defines Professional services as those for which special qualifications or licensing is required.

Maintenance is the act of keeping an existing building, facility, or equipment in proper working order.

Construction can mean both new facilities and buildings or it can apply to renovations of existing facilities. If the services applied to an existing facility are not LIKE FOR LIKE, then the project is construction under the public works statutes.

Real property procurements are the purchase of land and/or buildings by the district. These procurements are extremely specialized and require legal assistance.

To determine the level of expenditure, the Purchasing Department has developed a grouping of commodity categories (please reference pages 27-28 of this manual). The Purchasing Department groups all commodities so contracts for the purchases of these items can be awarded in a competitively awarded process to assure schools and departments are receiving Best Value for their budget expenditures and are following all statutes, polices, and procedures.

The Purchasing Department watches all District transactions and groups procurement as needed and required under these guidelines.

Schools and departments are encouraged to make purchases from established contracts to prevent such delay.

The staff using the contracts must monitor Vendor performance. If vendor performance becomes an issue during the contract term, Grand Prairie ISD has the right to terminate the contract with said vendor prior to the original expiration term noted in the original contract. Vendors who are not performing in accordance with the terms and conditions of the contract should be given written notification. If vendor performance does not improve within 30 days of receipt of notice, Grand Prairie ISD has the right to terminate the contract.

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## PURCHASING LIMITS

Schools and departments are encouraged to use vendors currently under contract with the district for all procurements, or a competitively bid contract through one of the Purchasing Cooperatives in which the district participates. Purchases through awarded contracts must follow the terms of the awarded contract. If the contract calls for competitive quotes from awarded contract vendors, then competitive quotes will be required for any expenditure under that contract.

For purchases of personal property or services, schools and departments will be allowed to purchase using the Best Value criteria for the individual transaction, with the following guidelines:

- All purchases require a written quote from a vendor, except from the district used E-Commerce vendors.
- The “attempt” to obtain written quotes **MUST** be documented by supplying copies of all emails sent to vendors. The quote request should state both the date and time for the quotes to be returned. Multiple vendors **MUST** be allowed to submit a quote for the property, or services requested. When using child nutrition funds, three quotes are required when the purchase exceeds \$9,999 within the commodity codes referenced on page 37.

For any purchases of commodities or services over \$50,000 in total for the fiscal year, the Purchasing Department should be contacted so that a formal competitive procedure can be followed in the procurement process. The Purchasing Department will assist the campus or department in following the statute requirements for competitive procurements and in preparing the contract recommendations for Board consideration if the total contract award exceeds \$250,000.

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# EXCEPTIONS TO PURCHASING LIMITS

The following exceptions to the purchase limits referenced above apply:

- **Purchases Funded with Federal Grant Awards:** Purchases for goods and/or services to be funded with federal grant awards require compliance with the administrative requirements imposed by the respective federal awarding agency. For example, the US Department of Education (USDE) or the US Department of Agriculture (USDA).
- **Software and Online Subscription Purchases:** Purchase or renewal of a given software application and/or online software subscription (herein referred to as “software”) does not require multiple price quotes. However, if the expenditure is being paid with federal funds the purchase must follow section “1” above.
- **Purchases Funded by Student Activity Funds:** Purchases for goods or services funded by Student Activity Funds (budget fund code 865) are not considered District funds, and are exempt from all public procurement requirements, both federal and state procurement rules and regulations. However, purchases for goods or services with funds derived from student activities (i.e., fundraisers) deposited into a District-controlled activity account (e.g., budget code 461) or General Operating Fund account (e.g., fund account 199) must follow all applicable procurement requirements.
- **Exceptions Authorized by Director of Purchasing:** In some instances, depending on the circumstances, the Director of Purchasing shall have the right to waive the standard purchasing procedures referenced in this procedure’s manual, under the condition that any applicable Federal, State, or Local rules and regulations are still followed in their entirety. Circumstances leading to waiving such standard purchasing procedures may involve situations including, but not limited to, time sensitive procurements where standard procurement procedures would cause a disadvantage to the district, lack of known qualified vendors, etc.
- **Registrations to Events and Conferences:** Registrations to events and conferences offered by industry related organizations (e.g., TASBO, TASB, etc.) for professional development or to keep up with industry or job-related information are exempt from the purchase limit requirements, unless federal grant awards are used to fund the expenditure in which case the applicable federal grant requirements must be complied with in their entirety.
- **Purchases for Student or Staff Related Activities at Public Organizations:** Purchases for district-organized activities at unique public organizations (e.g., Dallas/Fort Worth Zoo, etc.) are exempt from the purchase limits requirements, unless federal grant awards are used to fund the expenditure, in which case the applicable federal grant requirements must be followed in their entirety.

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## PURCHASING CONTRACTS

As directed in School Code, Section 44.031, Subchapter A, except for produce or fuel, all District contracts valued at \$50,000 or more in the aggregate for the 12-month period must be procured by use of one of the following methods:

- Competitive Bidding, for personal property or for services other than construction services
- Competitive Sealed Proposals
- A Request for Proposal, for Services other than Construction Services
  - District employees may become approved vendors by completing the District's RFP corresponding to the type of service they are providing.
  - Services cannot be provided by a district employee during working hours. All services must be provided outside of their workday.
- An Interlocal Contract
- A method provided by Chapter 2269, Government Code for Construction
- The Reverse Auction Procedure Defined in Government Code, Section 2155.062
- The Formation of a Political Subdivision Corporation under Local Government Code, Section 304.001.

This applies to all personal property, services, and construction contracts, except for those categories listed in the following section.

## GRAND PRAIRIE ISD CONTRACTS

Vendor contracts with Grand Prairie ISD can consist of a signed approved district purchase order and a district approved quote from the vendor. Any goods or services, except for those entered by the Superintendent or their designee, without a district approved purchase order does not constitute a valid contract with the district.

## DEPOSITS/PRE-PAYMENTS

Grand Prairie ISD does not pay deposits or pre-payments for materials/services not received by or provided to the district.

If deposits/pre-payments are requested by the vendor, prior approval must be obtained from the finance department.

Deposits or pre-payments for products or services **are not** allowed when using federal funds.

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# COOPERATIVE/INTERGOVERNMENT PURCHASING CONTRACTS

To conserve and coordinate the use of public funds, a school district may enter into agreements for the cooperative purchase of goods and services between itself and other local governments or agencies (interlocal agreement).

Such contracts, if competitively bid by the cooperative administration, satisfy the requirement for competitive procurements listed under the Education Code, Chapter 44.031.

Participation is allowed through the execution of an Interlocal Agreement between the Grand Prairie ISD Board of Trustees and the administration of the Cooperative. Currently, Grand Prairie ISD is an active member of several Purchasing Cooperatives. These include, but are not limited to: TASB, BuyBoard, HDE Choice Partners, E&I Cooperative Services, EPCNT, Equalis, 1GPA, HGAC, National IPA, PACE, Regional ESC's, Sourcewell (NJPA), TCPN, TXMAS, TIPS, US Communities, DIR, OMNIA, ASC, NPA, CTPA, etc.

However, before grant funds or federal funds can be used for a procurement through one of the Cooperative's contracts, the Purchasing Department must have a statement from the Cooperative's administration that the Cooperative is in total compliance with EDGAR requirements. Additionally, the vendor must submit the background certification form required by the district if the vendor has continuing duties in relation to the contract and direct contact with students.

The district may use the Cooperative's Job Order Contracts (JOC) for the purpose of routine maintenance, repair, alteration, and small construction on existing facilities, in accordance with Chapter 2269, Texas Government Code. If such contracts are used, the district must obtain any required bonds-both performance and payment. The district must also certify that the project meets the requirements for any design or engineering services required.

Purchases under these contracts can expedite the procurement process for District departments and schools.

For additional information regarding available commodities or services, please contact the Purchasing Department.

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## COMPETITIVE PROCUREMENT PROCESS

If it is determined that the personal property or service needed will require either a Request for bid or Request for Competitive Sealed Proposal process on the open market, the Purchasing Department will prepare the bid documents. The requesting department will be responsible for providing specifications of the products or services needed. Upon conclusion of the bidding process, the Purchasing Department will open, tabulate, and provide the school or department with written documentation of the results. The school or department will be asked to evaluate and score the results.

Notices of the time and place when the bids or proposals or other responses to a request for qualification may be examined must be published once a week for at least two weeks before the deadline for receipt. This notice must include the notice as to where the bids shall be opened as well as the date and time due. Such notice must be published in the county where the district's administrative office is located.

Bids or Proposals will be opened (if applicable) in a public meeting by the Purchasing Department. All such openings are open to the public or any interested parties.

If the contract value exceeds \$50,000 annually, the Purchasing Department will review and prepare an Agenda Item for Board approval and submit it for consideration.

Once a contract award is determined either through administrative action or Board action, the Purchasing Department will notify the using school or department as well as all vendors involved in the process.

## SPECIFICATIONS

The district's end user or department is responsible for the development of specifications for the items or services needed. Specifications cannot be used that prevent competition in the marketplace on comparable items or services. The use of any brand name or manufacturer's reference should be descriptive not restrictive and should merely indicate the type and quality of the items wanted.

Detailed specifications are desired, but, at the least, all specifications should include the minimum acceptable requirements or features. Alternate bids may be considered for award if in the best interest of the district. The Purchasing Department staff are available to assist in this area as needed.

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## COMPETITIVE PROCUREMENT EXCEPTIONS

**Produce and Fuel:** There is an exception for produce and fuel that allows the district to use any method listed above or those in School Code, 44.034 for purchases.

**Cooperative Purchase Programs:** All items and services available through a Board approved purchasing cooperative have satisfied all procurement regulations for the formal competitive procurement process. However, unless the specific item or service is identified specifically in the awarded contract, the department or school is encouraged to obtain multiple quotes from awarded cooperative vendors. Additionally, if the item or service is identified as having been competitively awarded, the unit of measurement is typically “one.” For purchases of any quantity or level of service over the base unit every effort to negotiate a volume price should be made.

**Professional Services:** Departments requesting services under this category shall be required to provide proper justification as to why the proposed service qualifies as a professional service.

- An additional exception applies to professional services as defined under the Government Code, Section 44.032(F). These services include, but are not limited to, professionals such as attorneys, architects, fiscal agents, or licensed medical professionals.
- Contracts for professional services are not procured through competitive bids. Such services are chosen through a process of selection involving the review of professional qualifications.
- Professional services are defined under Attorney General Opinion DM-347 is a person whose profession requires years of education and service for one to attain competence and calls for a high order of intelligence, skill, and learning.

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# VENDOR PROCESSES

## Contract/Agreement Procedures

All contracts, agreements, quotes, or any other documents with terms and conditions or “fine print” and require a signature must go through the contract review and approval form process. Even if there is no financial cost required by the agreement, all agreements require a review before executing. Only the District’s authorized signers (Superintendent, Deputy Superintendent of Business, or designee) can execute an agreement document for the district.

The Business Operations Contract Review & Approval form can be found in Laserfiche. If you do not have access to Laserfiche or are unable to find the document, please email the purchasing department.

The completed form and the agreement must be submitted through Laserfiche for approval. Please allow at least 30 days for review to occur.

## Vendor Background Check Procedures

All vendors approved to provide a training or event on a campus or for a department must have a background check conducted prior to coming on to the premises. **It is the responsibility of the campus or department that has contracted with the vendor to contact Human Capital and request a background check be performed on the vendor.**

## Vendor Registration/Approval

Grand Prairie ISD requires all vendors in which product/services are purchased to be placed under one of the 28 codes listed within this manual.

If a campus/department has a non-approved vendor they want to use, the following will be required:

- The vendor must be contacted to find out if they will fill out an RFP with our district. If the vendor agrees to fill out an RFP, the campus/department must enter a New Vendor Request Form in Laserfiche.
- Once the purchasing coordinator receives the form, the vendor will be sent information on how to complete the RFP in our electronic bidding software “IONWAVE.”
- Once the vendor submits their RFP and it is accepted by the purchasing department, they will be set up as a vendor in Skyward. If the dollar amount to spent exceeds \$50,000/year, the vendor will be placed on the next available board meeting agenda before a purchase order can be issued. If the spending amount does not exceed \$50,000/year, the campus/department can enter a requisition immediately after the vendor is set up and active.
- If a non-approved vendor does not agree to fill out a district RFP AND the vendor will accept a credit card at the point-of-sale, a purchase order can be issued to Bank of America to obtain a district credit card. There is a \$5,000 per vendor limit to use a credit card in this manner.

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## Vendor Purchase Order Requirements

Obtain a purchase order FIRST before delivering any products or performing any services.

Grand Prairie ISD's Purchasing Policy requires that all orders for goods and/or services have a purchase order before shipment of the product and/or services. If invoices are received without a valid PO number, then internally it may be considered an illegal purchase, and the district is not obligated to pay.

A packing slip is required with each shipment of products, supplies, and equipment. Supplier packing slips and invoices must reference the purchase order number or indicate the purchase was made with a credit card. Please note that 99% of purchases are made with a purchase order.

Invoices that are received without Purchase Order information or with the word "VERBAL" may NOT be paid by Grand Prairie ISD. Also, requisition numbers are not a valid authorization to purchase or order goods and/or services. The process for obtaining a purchase order is as follows:

1. Grand Prairie ISD employees who are authorized to order goods and/or services must first obtain a quote from approved/awarded vendors.
2. Grand Prairie ISD employee enters a requisition based on the quote.
3. Grand Prairie ISD Purchasing Department issues a purchase order based on the quote and requisition.
4. Purchase Order is sent to vendor.
  - a. Grand Prairie ISD does not pay deposits or pre-payments for materials/services not received by or provided to the district. Prior approval for deposits/pre-payments must be obtained from the finance department.
  - b. Deposits or pre-payments are **not** allowed when using federal funds.
5. The Vendor delivers products or performs services – limited to scope and quantities on the purchase order. Prior approval required for changes to scope and quantities. Do not deliver or perform above the purchase order scope unless you receive prior approval for the change.
6. The Vendor submits the invoice, with the purchase order number printed on the invoice. Invoices must not exceed the amount of the purchase order unless a change has been approved prior.
7. The district pays the invoice (normal NET 30) if it conforms with the purchase order and any changes that were approved and issued.

All orders must be delivered to the appropriate Grand Prairie ISD location on the purchase order and not to any other personnel or department.

Please direct questions regarding this policy to the Purchasing Department at 972-237-5515.

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## Vendor Appeal Process

The district alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements made with federal funds. 2 CFR § 200.318(k).

Any bidder objecting to the recommendation for award or the award of contract may appeal the action to the Purchasing Department by formally notifying the Director of Purchasing by email at [purchasing@gpisd.org](mailto:purchasing@gpisd.org) no later than seven (7) calendar days after the basis for appeal is known. The bidder shall have an opportunity to meet and/or talk with the Director of Purchasing to present the issues. A formal written response to the appeal shall be issued by email no later than seven (7) calendar days after a decision is made.

If a vendor appeals the award of a contract, the district will send an email within two (2) business days to the Texas Department of Agriculture to notify them of the appeal, if applicable.

### Appeal at Purchasing Director Level

For an appeal of recommendation of award of contract, the Director of Purchasing shall review the decision of the selection committee. The Director of Purchasing may approve, modify, or disapprove the decision of the selection committee. In disapproving, the decision, the appeal will be remanded to the selection committee for resolution. In all other cases, the decision of the Director of Purchasing is the final action by Grand Prairie ISD. The decision shall include a statement of the decision, with supporting material. Bidders receiving a decision on an appeal of recommendation of award shall forfeit the right to continue the appeal process of the award of contract.

### Appeal After Board Approval

In the event a bidder determines cause to appeal an award of contract, which has been approved by the Board of Education of Grand Prairie ISD, said action must be filed in writing to the “End-User” Department’s Executive Director. This action shall occur no later than seven days from the date of award of contract. The Department’s Executive Director reserves the right to meet with the protesting Bidder as a part of the appeal investigation. The Executive Director will issue a formal written decision within ten (10) calendar days.

### Furtherance of Appeal

If a Bidder wishes to pursue the appeal of an award of contract further, administrative procedures have been established for such action. These procedures will be outlined at the time the appeal is made.

## Appeal of Suspension or Termination

### Protest

Any Awarded bidder objecting to their Suspension or Termination may protest the action to the “End User” Department by formally notifying the Director of Purchasing [or

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designee] in writing within fourteen (14) calendar days from the date of the notification. The Awarded Bidder shall have an opportunity to meet with the Director of Purchasing or designee, to present his issues.

**Use of Administrative Process**

If the Award Bidder is unsatisfied with the outcome of this meeting, then the Awarded Bidder may utilize the administrative process to further the appeal.

**Continuation of Work Under Appeal**

Grand Prairie ISD reserves the right to proceed with the work under the contract during the appeal process if Grand Prairie ISD determines that this is in the best interest of Grand Prairie ISD, in the opinion of Grand Prairie ISD.

**Appeal of Termination: Non-Appropriation or Loss of Appropriated Funds**

NONE

**Cost of Appeal**

Any costs incurred in the appeal process will be the responsibility of the bidder(s) in all instances.

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## CONFLICT OF INTEREST

Local Government Code Chapter 176 provides information regarding conflict-of-interest statements to be filed by vendors and certain school district employees.

The Texas Conflict of Interest statutes apply to the district's officers and elected officials. There are specific rules regarding what constitutes a conflict of interest regarding a business transaction or real property transaction. For more information, please review the information provided on the Texas Ethics Commission website, [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

For expenditures from federal funds, District employees should be aware that the rules regarding conflict of interest are more stringent than the State requirements. For federal fund expenditures the rule states "neither an employee administering, directing, or authorizing the expenditure of federal funds, nor members of the employee's immediate family, can have a financial interest in a vendor or his/her company involved in the procurement transaction involving these funds."

District policy on Conflict of Interest and the reporting requirements can be found under District Board Policy-DBD.

The district will impose appropriate sanctions or disciplinary actions, including, but not limited to, termination and/or prosecution, for any employee or officer who violates any of these requirements related to stand of conduct and conflict of interest. 2 CF § 200.318(c)(1).

See Board Policy CBB Legal

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# FEDERAL FUND PROCESSES

## Full and Open Competition

All procurement transactions paid with federal funds are conducted in a manner that provides *full and open competition* consistent with 2 CFR § 200.319 and 200.320. In an environment of full and open competition, no proposer or bidder has a competitive advantage over another. All potential proposers and bidders must be provided the same information and have the same opportunity to submit a bid or proposal. Providing a competitive advantage to one or more potential proposers or bidders over another can open the potential for disputes and lawsuits that can be costly and can significantly delay the completion of projects.

To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals (RFPs) are excluded from competing on those procurements. The district does not engage in the following situations that may restrict *full and open competition*, including but not limited to:

- placing unreasonable requirements on firms for them to qualify to do business.
- prequalified lists must not preclude potential bidders from qualifying (200.319(e)).
- requiring unnecessary experience and excessive bonding.
- noncompetitive pricing practices between firms or between affiliated companies.
- noncompetitive contracts to consultants that are on retainer contracts.
- organizational conflicts of interest.
- specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement.
- any arbitrary action in the procurement process. 2 CFR § 200.319(a).

The district also complies with the following requirements in 2 CFR 200 to endure full and open competition when purchasing with federal funds:

## Geographical Preferences Prohibited

The district conducts federal procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. 2 CFR § 200.319(c). Accordingly, when purchasing with federal funds, the district does not give preference to a contractor/vendor which is in Texas or the local or surrounding community simply due to the location. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided an appropriate number of qualified firms, given the nature and size of the project, are left to compete for the contract.

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## **Domestic Preferences for Procurement**

The district should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, or acquisition, of goods and products produced in the United States. The district includes this preference in all contracts and purchase orders for work or products using federal funds. 2 CFR § 200.322.

## **Prohibition on Certain Telecommunications Companies**

The district will not procure, enter a contract to procure, or extend or renew a contract to procure covered telecommunications and video surveillance equipment or services described in Public Law 115-232, section 889. Covered telecommunications and video surveillance equipment or services are those produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of such entities. 2 CFR § 200.216. To meet this requirement, the district's Purchasing Department will check [www.sam.gov](http://www.sam.gov) to ensure the vendor is not excluded for this reason. See OMB 2 CFR Frequently Asked Questions, Q-47 [https://www.cfo.gov/assets/files/2CFR-FrequentlyAskedQuestions\\_2021050321.pdf](https://www.cfo.gov/assets/files/2CFR-FrequentlyAskedQuestions_2021050321.pdf)

## **Never Contract with the Enemy**

The district complies with the regulations implementing Never Contract with the Enemy in 2 CFR part 183 prohibiting contracts, grants and cooperative agreements that exceed \$50,000, are performed outside the U.S. and its territories, and are in support of a contingency operations in which members of the Armed Forces are actively engaged in hostilities. 2 CFR § 200.215.

## **Contracting with Small, Minority, Women's, or Veteran-Owned Businesses**

When possible, should consider small businesses, minority businesses, women's businesses, veteran-owned businesses, and labor surplus area firms. Consideration means:

- including these businesses on solicitation lists
- soliciting whenever deemed eligible as potential sources
- dividing separate procurements and establishing delivery schedules to permit maximum participation
- use organizations like the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
- requiring contractors under a federal award to apply these conditions to subcontracts

## **Prequalified Lists**

The district ensures that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. 2 CFR § 200.319(e). The district accomplishes this by conducting internet searches, including using vendor searches available through the [Texas Comptroller of Public Accounts](#), and by using other less technologically advanced tools to locate and identify potential contractors. Grand Prairie ISD consults Buy Board, OMNIA, Choice Partners, TIPS/TAPS,

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EPCNT, and others to determine an adequate number of qualified vendors. Also, the district will not preclude potential bidders from qualifying during the solicitation period. The Purchasing Department is responsible for reviewing pre-qualified lists and determining if they include an adequate number of qualified sources.

## **Solicitation Language**

All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features which unduly restrict competition. The description will include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, will set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications will be avoided if possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description of features may be used to provide procurement requirements. The specific features of the named brand will be clearly stated and will identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. 2 CFR § 200.319(d)(1)-(2).

## **Federal Procurement System Standards**

In addition to avoiding conflicts of interest and ensuring full and open competition as described above, the district’s written procurement procedures for purchases made with federal funds reflect applicable state and local laws and regulations and conform to the following federal standards for procuring goods and services with federal funds. 2 CFR § 200.318.

## **Avoiding Acquisition of Unnecessary or Duplicative Items**

The district avoids the acquisition of unnecessary or duplicative items. Additionally, the district considers consolidating or breaking out procurements to obtain a more economical purchase. And, where appropriate, the district makes an analysis of leasing and purchasing property or equipment to determine the most economical approach. 2 CFR § 200.318(d).

These considerations are given as part of the process to determine the allowability of each purchase made with federal funds.

## **Use of Federal Excess and Surplus Property**

The district considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. 2 CFR § 200.318(f).

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## Procurement of Recovered Materials

In addition to use of federal excess and surplus property, the district complies with section [6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act](#). 2 CFR § 200.323. 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. The requirements apply to state and local governments, including school districts, and include the purchase of everyday items such as paper products, non-paper office products, office furniture, floor mats, and awards and plaques, as well as many other items, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000. Requirements also include:

- 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.

Pursuant to section 6002, the decision not to procure recovered materials must be based on a determination that such procurement items:

- A. are not reasonably available within a reasonable period of time;
- B. fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the district; or
- C. are only available at an unreasonable price. Any determination under subparagraph (B) shall be made based on the guidelines of the Bureau of Standards in any case in which the material is covered by the guidelines.

## Awarding Contracts to Responsible Contractors

The district must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract.

The district considers:

- Contractor integrity
- Public policy compliance
- Proper classification of employees (see FLSA)
- Past performance record
- Financial and technical resources

The district may develop written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work or products providing services on a contract, and other worker protections. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

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The district will check references where possible and engage in practical activities such as checking with the local Better Business Bureau and the Texas Attorney General's office to ensure there are no outstanding complaints against the contractor.

The district will award a contract to a contractor who has the appropriate experience, expertise, qualifications, and any required certifications, necessary to perform the work. Contractors should also have the financial resources to sustain the project while the initial work is being completed and during each service period until he or she submits invoices for payment to the district as work is completed (for example, at the end of each month). Grand Prairie ISD does not pay deposits or pre-pay for materials/services that have not been received/provided. Prior approval for deposit/pre-payment requests must be obtained from the finance department. Prior Contractors should have the proper equipment or the capability to subcontract for the proper equipment necessary to complete the contracted work. For example, if the contractor is to develop curriculum guidelines on a computer, the contractor should already have his or her own computer with the appropriate software.

## **Debarment And Suspension of Vendors**

The debarment and suspension procedures are intended to prevent waste, fraud and abuse in Federal procurement and non-procurement actions. Debarment or suspension of an organization or individual excludes that company or individual from doing business with the Federal Government.

The district will not subcontract with or award subgrants to any person or company who is debarred or suspended from receiving federal funds. The district is required to ensure all contracts over \$25,000 are not made to suspended or debarred vendors. 2 CFR § 200.214; 2 CFR Part 180; 2 CFR Part 3485.

The Purchasing Department verifies the vendors debarment and suspension status by logging into the Sam.gov website. The search MUST be conducted BEFORE awarding the work. The vendor's status is documented and attached to all relevant purchase orders/bid documents.

## **Best Value - State Rules for Selecting Vendors**

In addition to federal standards for making awards only to responsible contractors, TEC § 44.031 establishes nine criteria that school districts must use in determining contract awards to vendors, whether using state, local, or federal funds. All nine criteria must be considered *unless federal law prohibits it or is more restrictive as noted below*.

In evaluating procurement decisions, the district will always apply the best business practices. In doing so, the district will always consider the Best Value criteria as listed below. When looking for a competitively procured contract, the district will state the Best Value criteria listed below as well as any additional criteria to be considered within the bid or proposal document.

Best Value criteria to be considered shall include:

- The purchase price.
- The reputation of the vendor and of the vendor's goods or services.

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- The quality of the vendor’s goods and services.
  - The extent to which the goods or services meet the district’s needs.
  - The vendor’s past relationship with the district.
  - The impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses.
  - The total long-term cost to the district to acquire the vendor’s goods or services.
  - For a contract for goods and/or services, other than goods and/or services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor’s ultimate parent company or majority owner:
    - Has its principal place of business in this state; or
    - Employes at least 500 people in this state. (**Note:** Federal requirements prohibit geographic preference when purchasing with federal funds. Therefore, *this requirement cannot be used to select a contractor when the purchase is made with federal funds.*)
  - Any other relevant factor specifically listed in the request for bids or proposals. Factors that a school district may consider under these criteria would include time and compatibility of goods/products purchased with those already in use in the district.

Schools or departments will be asked to provide an evaluation of all criteria included in the bid documents. All such evaluations will be kept in the Purchasing Department files and may be presented to the Board with the contract award recommendation.

## Contract Provisions

In all federally-funded contracts, the district includes the applicable provisions described in [Appendix II to 2 CFR Part 200 – Contract Provisions for non-Federal Entity Contracts under Federal Awards](#). 2 CFR § 200.327. Provisions include the following:

- All contracts paid from state or federal grants administered by TEA must retain copyright for the Texas Education Agency (TEA) and for the federal government (if a federally funded contract) unless otherwise negotiated in writing with TEA. Pursuant to the provisions in 2 CFR § 200.315, title to intangible property vests in the district if such property is used for authorized purposes. However, TEA and the federal awarding agency reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.
- All contracts greater than \$250,000 must address administrative, contractual, or legal remedies.
- All contracts greater than \$10,000 must address termination for cause and for convenience.
- All construction contracts must include the Equal Employment Opportunity clause.
- All prime construction contracts more than \$2,000 must include a provision for compliance with the Davis-Bacon Act and its implementing regulations.

- All contracts more than \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with the Contract Work Hours and Safety Standards Act and its implementing regulations.
- All contracts that meet the definition of “funding agreement” and where the district wishes to enter into a contract with a small business firm or nonprofit organization must include a provision for compliance with the Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.
- All contracts and subgrants greater than \$150,000 must contain a provision for compliance with the Clean Air Act and the Federal Water Pollution Control Act and their implementing regulations.
- All contracts must include compliance with the Energy Policy and Conservation Act pertaining to mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan.
- A contract or subcontract must not be made to any party that is debarred or suspended from receiving federal funds.
- Lobbying Certification and Disclosure of Lobbying (Byrd Anti-Lobbying Amendment) – All contractors that apply or bid for an award of \$100,000 or more must file the required Lobbying Certification that it has not and will not use any federal funds to lobby. If *non*-federal funds are used to lobby, the contractor must complete the Disclosure of Lobbying and forward the disclosure to the next tier, who must forward it through each tier to the federal awarding agency.
- All contracts greater than \$10,000 must include compliance with section 6002 of the Solid Waste Disposal Act and its implementing regulations. 2 CFR § 200.322

The district also adheres to the best practices recommended by TEA as it pertains to professional services contracts paid from federal grants. See *III. Procurement System, G. Contract Administration*.

## Maintenance of Procurement Records

Per *Module 5 of FASRG*,

“accurate record-keeping and documentation should be a fundamental element of the procurement process. Precise and systematic record-keeping and records management withstands the constant scrutiny of various interest groups including vendors, the general public, and outside agencies as well as internal groups which are the users or customers of the purchasing system. This records management function should support the school district's overall information management plan described in the Data Collection and Reporting module and generally provide for:

- Both the *flow and retention of forms* including requisitions, purchase orders, petty cash and cash reimbursement receipts.
- *Full documentation of all competitive procurements* with comprehensive competitive procurement files containing specifications, competitive procurement advertisement,

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pre-competitive procurement conference minutes (as appropriate), competitive procurements submitted, competitive procurement tabulation, board minutes indicating competitive procurement awards (or a similar award notice) and related records.

- *Full documentation of procurement procedures* utilized to obtain goods and services through competitive sealed proposals, design/build contracts and other procurement options.
- *Documentation of price quotations* obtained when purchasing with federal funds.

The records management function may rely on electronic formats including automated systems, diskettes, CD-ROM, imaging and microfiche. Alternatively, it may use hard copy or a combination of methods.”

Therefore, the District will select the methods best suited to its needs.

In addition, in accordance with federal standards, the district maintains records sufficient to detail the history of all federal procurements, including but not necessarily limited to, the following:

- the method of procurement and the rationale for choosing that method (i.e., the reason the district chose procurement by micro-purchase, small purchase procedures, sealed bid, competitive proposals, or noncompetitive proposals)
- the type of contractual agreement or instrument used and rationale for using that type
- the process used to either select the contractor or to reject the contractor (what was the process and what were the factors considered in selecting or rejecting the contractor; this must be in writing)
- the basis used for determining the price of the contract (including a cost or price analysis), and
- verification that the contractor is not suspended or debarred. 2 CFR § 200.318(i)

## **Time-and-Materials Contracts**

Time-and-materials contracts are a hybrid of fixed-price and cost-reimbursement contracts. They present the highest risk to the government and the lowest risk to the contractor. Therefore, they are the least desirable for the federal or state government and are rarely awarded. 2 CFR § 200.318(j)

Time-and-materials type contract means a contract whose cost to the district is the sum of the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

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. In other words, the contractor is saying it will work until the task is completed, but it has no idea how long it will take, nor how much money it will cost. This obviously can be very cost prohibitive and can encourage fraudulent behavior by some unscrupulous contractors. Therefore, federal regulations permit the use of a time-and-materials contract only after a determination is made that no other contract is suitable and only if the contract includes a ceiling price that the contractor exceeds at its own risk.

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Further, the district must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

The district may use a time-and-materials type contract paid with federal funds in accordance with the above and only (1) after a determination that no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk.

## **Pre-Procurement Documents**

In accordance with 2 C.F.R. § 200.325, the district will make available upon request from [pass-through entity or federal awarding agency] all procurement documents for pre-procurement review, such as requests for proposals or invitations for bids, or independent cost estimates. District must submit the technical specifications of proposed procurements when requested by the Federal agency or pass-through entity.

## **Settlements of Issues Arising Out of Procurements**

The district alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements made with federal funds. 2 CFR § 200.318(k). These issues include, but are not limited to, source evaluation (i.e., analyzing information *sources* to assess their credibility), protests, disputes, and claims. These standards do not relieve the district of any contractual responsibilities under its contracts. Violations of law will be reported to the local, state, or federal authority having proper jurisdiction. The Director of Purchasing is the primary office responsible for handling and coordinating the settlement of any contractual and administrative issues arising out of procurements.

## **DAVIS-BACON ACT**

The following five key labor standard objectives must be accomplished by the district to administer and enforce Davis-Bacon requirements and protect worker's rights.

### **1.1 Objectives for Davis-Bacon Labor Standards Compliance**

- Apply Davis-Bacon requirements properly.
- Support Grand Recipient compliance with labor standards through education and technical assistance.
- Monitor Grand Recipient performance.
- Investigate probable violations and complaints of underpayment; and
- Pursue debarment and other available sanctions against repeat labor standards violators.

### **Step 1. Project Designation**

The district designated officer (DDO) will designate an employee or consulting firm to ensure the proper administration and enforcement of the federal labor standards on contracts covered by Davis-Bacon requirements. Tasks include:

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- Providing labor standards preconstruction advice and support to the Grant Recipient and other project principals (for example the owner, sponsor, architect), including ensuring that no prime or sub-contract is awarded to a contractor that is ineligible (i.e., debarred) for federally assisted work.
  - Providing the proper Davis-Bacon wage decision and ensuring that the wage decision and contract clauses are incorporated into the contract for construction and any subcontracts.
  - Monitoring labor standards compliance by conducting interviews with construction workers at the job site, reviewing payroll reports, and ensuring that the applicable Davis-Bacon wage decision and the Department of Labor's Notice to All Employees are posted at the job site; and
  - Overseeing any enforcement actions that may be required.

## **Step 2. Obtain an Applicable Wage Decision for the Project**

Wage decisions:

- Are established by the U.S. Department of Labor (DOL).
- List construction work classifications (such as carpenter, electrician, plumber, laborer, etc.) and the minimum wage rates, and fringe benefits where prevailing, that people performing work in those classifications must be paid.
- Are categorized into four groups – heavy, highway, building, and residential construction.
- Apply to specific geographic areas, usually a county or group of counties; and
- Are modified from time to time to keep them current.

The DDO must obtain the applicable wage decision from the Department of Labor's website at <https://beta.sam.gov> for all construction contracts where Davis-Bacon and Related Acts (DBRA) that are greater than \$2,000. Review the various wage decisions for each county and choose the one that is appropriate for the work to be done.

## **Step 3. Include the Wage Decision in the Bid Documents**

If the construction work is procured through competitive bidding (either sealed bids or small purchase procurement), the wage decision (and any modifications) must be included in the bid package.

## **Step 4. Award the Construction Contract**

Each contract subject to Davis-Bacon labor standards requirements must include contract provisions containing labor standards clauses and a Davis-Bacon wage decision. These are the labor standards clauses to include:

- Describe the responsibilities of the construction contractor concerning Davis-Bacon wages.
- Obligate the construction contractor to comply with the labor requirements.

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- Provide for remedies in the event of violations, including withholding payments due to the construction contractor to ensure the payment of wages or liquidated damages; and
  - Enable the district designee to enforce the Federal labor standards applicable to the project.

#### **Step 5. Contractor Posts Wage Decision at the Job Site**

The prime contractor must post a copy of the wage decision and a copy of the DOL Davis-Bacon poster entitle Employee Rights under the Davis-Bacon Act ([WH-1321](#)) at the job site in a place that is easily accessible to all of the construction workers employed at the project. If the contractor requests additional classification(s) as described above, the contractor must also post the notice of the request and the associated wage decision on the job site. The DDO will collaborate with the prime contractor to demonstrate compliance.

#### **Step 6. Review Project Payrolls During Construction**

The DDO or other designated inspector must conduct an on-site visit to the project site and interview some of the workers concerning their employment on the project. In addition, the DDO must periodically review payrolls and related submissions to ensure that the labor standards requirements have been met. The DDO will notify the district or contractor if these reviews find any discrepancies or errors and will provide instructions about what steps must be taken to correct any problems.

- **On-site Interviews** – The DDO must conduct employee interviews to verify that contractors are complying with labor standards requirements. Every employer (contractor, subcontractor, etc.) must make their employees available for interviews at the job site with the DDO.
  - Employee interviews should be representative of all classifications of employees on the project.
  - The number and quality of interviews documented should reflect that the district designated officer is diligently ensuring that workers are paid at least minimum prevailing wage rates.
  - For every prime contractor and every subcontractor, a minimum of one employee in each classification must be interviewed, with at least 25% of the total number of the employees interviewed.
  - The interviews are confidential, and the employee will be asked about the kind of work they perform and their rate of pay.
  - Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work.
  - Interview information must be recorded on the HUD Form 11 available at <https://www.portal.hud.gov/hudportal/documents/huddoc?id=11.pdf>.
  - If employees are not available for interviews during the DDO’s on-site visit, the DDO must document the date of the on-site visit, the reason

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- employees were not available, and the attempt to obtain the required information through other means, such as mailed questionnaires.
- Failure to conduct employee interviews will result in a finding of non-compliance, and potentially disallowed costs. Contractors that refuse to make employees available may be reported to the DOL, and the DDO that do not ensure interviews are conducted may receive an administrative penalty. Communication between the DDO and the prime contractor is critical to ensure that all required interviews are completed, especially when crews are only onsite for a brief period.

### **Step 7. Review Project Payrolls During Construction**

The DDO must periodically review payrolls and related submissions to ensure that the labor standards requirements have been met. The district designee will notify the district or contractor if these reviews find any discrepancies or errors and will provide instructions about what steps must be taken to correct any problems.

- **Project Payroll Reviews** – A weekly certified payroll report for all prime and subcontractors must be completed and kept in the local contract files beginning with the first week in which construction begins on the project and for every week after until the work is complete, unless construction is suspended with documentation. The district will monitor the payroll record review based on the procedures referenced in 29 CFR 3.4 – <https://www.ecfr.gov/current/title-29/subtitle-A/part-3/section-3.4> .

The DDO must review the payroll submissions to ensure that:

- Workers are properly listed on the payrolls for the days, work classification, and rate of pay (compare to interview forms).
- The payrolls are complete and signed.
- The employees are paid no less than the wage rate for the work classification shown.
- Apprentice and trainee certifications are submitted (where needed)

Reviewing certification procedures will align with 29 CFR 5.5 – <https://www.ecfr.gov/current/title-29/subtitle-A/part-5/subpart-A/section-5.5>

### **1.2 Restitution for Underpayment of Wages**

Where underpayments of wages have occurred, the employer must pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less any permissible and authorized deductions.

#### **Notification to the Prime Contractor**

The DDO must notify the prime contractor in writing of any underpayments found during payroll or other reviews.

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- The notice must describe the underpayments and provide instructions for computing and documenting the restitution to be paid.
  - The prime contractor is allowed 30 days to correct the underpayments.
  - The prime contractor is responsible to the DDO for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

### **Computing Wage Restitution**

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

### **Overtime and Underpayment**

Overtime hours are defined as hours worked on the work site more than 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basis pay plus the straight-time rate of any required fringe benefits. If employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:

- If the project is greater than \$100,000 and is therefore subject to Contract Work Hours and Safety Standards Act (CWHSSA) overtime requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project.
- The employer will also be liable to the Department of Labor (DOL) for liquidated damages (overtime violation dollar penalty) computed at the current monetary penalty established by DOL for each calendar day on which an overtime violation occurred. DOL publishes adjustments to penalties not later than January 15 of every year in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. A table of DOL's current monetary penalties may be found at <https://www.dol.gov/whd/resources/cmp.htm>
- Once liquidated damages are computed, the DDO must notify the prime contractor in writing of the fine and wage restitution owed.
- The employer may request a reduction or waiver of liquidated damages under one or both of the following reasons:
  - The computation of liquidated damages is incorrect; and/or
  - The violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the employer. The employer's request must be made in writing within 60 days after the date of the notice and must explain the reason(s) why a reduction or waiver is warranted.
- **If liquidated damages are equal to or less than \$100,000, the employer is encouraged to seek a reduction or waiver of liquidated damages.**

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Employers are not required to submit copies or checks (certified or otherwise) to the DDO as proof of corrected underpayments. The employer reports and certifies restitution payments on a correction payroll, which is kept in local files.

### **Corrected payrolls**

The employer will be required to report the restitution paid on a corrected certified payroll. The corrected payroll will reflect the period for which restitution is due. EXAMPLES:

- Payrolls #1 through #6; or a beginning date and ending date.
- The corrected payroll will list each employee to whom restitution is due and their work classification.
- The total number of work hours involved (daily hours are usually not applicable for restitution).
- The adjustment wage rate (the difference between the required wage rate and the wage rate paid).
- The gross amount of restitution due.
- Deductions and the net amount to be paid.

A verified signed Payroll (Form A708) must be sent to the DDO.

### **Review of Corrected Payroll**

The DDO will review the corrected payroll to ensure that full restitution was paid. The prime contractor must be notified in writing of any discrepancies and will be required to make additional payments, if needed, and documented on a supplemental correction payroll within 30 days.

### **Inability to Locate Worker**

Sometimes wage restitution cannot be paid to an affected employee because, for example, the employee has moved and cannot be located. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The prime contract will continue to attempt to locate workers entitled to restitution for three years after the completion of the project. After three years, any amount remaining in the account for workers' restitution will be credited and/or forwarded by the prime contractor to the district.

NOTE: The prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors.

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# METHODS FOR PROCURING WITH FEDERAL FUNDS (TDA ONLY)

2 CFR § 200.320 provides for five methods that must be used when making purchases with federal funds. In some cases, the **federal** methods are more restrictive than **state** requirements; in other cases, the **state** requirements are more restrictive than the **federal** methods. Additionally, if **local** requirements are more restrictive than either state or federal, then local requirements must be followed. In all cases, the more restrictive requirements or methods must be followed when making purchases with federal funds.

The type of purchase method and procedures required depends on the cost (and type, in some cases) of the item(s) or services being purchased.

- Micro-purchase
- Small purchase procedures
- Sealed bids
- Competitive proposals
- Noncompetitive proposals (sole source)

## Micro-Purchases (Purchases Up to \$10,000)

Federal methods provide for procurement by *micro-purchase*. *Micro-purchase* is defined in 2 CFR § 200.320(a)(1) as a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed \$15,000.

However, the district has self-certified, and our micro-purchase limit is up to \$49,999. Under 2 CFR § 200.320(a)(1)(iv), the district may increase its micro-purchase threshold up to \$50,000 through yearly self-certification. Texas self-certification threshold is set at \$49,999. Self-certification from the district includes justification and identification of the increased threshold and supporting documentation. Grand Prairie ISD has followed this process and has self-certified the district micro-purchase threshold to \$49,999.

The micro-purchase method is used to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

In accordance with federal requirements, micro-purchases may be awarded without soliciting competitive quotations *if the district considers the price to be reasonable* based on research, experience, purchase history or other information and documents if files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-federal entity. Also, when using federal funds, to the extent practicable, the district must distribute micro-purchases equitably among qualified suppliers. **If this method is used**, the district shall maintain evidence of this reasonableness in the records of all micro-purchases.

Reasonableness will be obtained based on the following: the organization will compare previous purchases, have personal knowledge of the item being purchased, and/or compare equivalent items being purchased.

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### **Small Purchase Procedures (Purchases Between \$10,001 and \$49,999 in the Aggregate)**

The federal threshold for small purchase procedures is \$250,000 (2 CFR § 200.320(b)). However, with the exceptions noted in TEC § 44.031, the state threshold for all school district contracts that do not require competitive bidding is less than \$50,000 in the aggregate. Therefore, the more restrictive state thresholds of less than \$50,000 must be followed.

Small purchase procedures (as defined in 2CFR § 200.320[b]) may be used in those simple and informal procurement methods for securing nonprofessional services, supplies, or other property that do not cost more than \$50,000.

EDGAR procedures must be followed when a purchase qualifies under this section.

### **Competitive Procurement (Purchases \$50,000 or More in the Aggregate)**

According to Texas Education Code § 44.031(a), one of the following competitive methods must be used for purchases of **\$50,000 or more** in the aggregate over a 12-month period (fiscal year):

- Competitive bidding for services other than construction services
- Competitive sealed proposals for services other than construction services
- Request for proposals, for services other than construction services (RFP)
- Interlocal contracts
- Design-build contracts
- Contract to construct, rehabilitate, alter, or repair facilities that involve using a construction manager
- A job order contract for the minor construction, repair, rehabilitation, or alteration of a facility
- Reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- The formation of a political subdivision corporation under Section 304.001, Local Government Code.

In addition, one of the three following methods must be used, depending on the circumstance described below, when purchasing with federal funds: sealed bids (formal advertising); competitive proposals; or noncompetitive proposals (sole source).

In addition, one of the three following methods must be used, depending on the circumstance described below, when purchasing with federal funds: sealed bids (formal advertising); competitive proposals; or noncompetitive proposals (sole source).

### **Sealed Bids (Formal Advertising)**

Bids are publicly solicited, and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available,

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- Two or more responsible bidders are willing and able to compete effectively for the business; and
  - The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally based on price.

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them with sufficient response time prior to the date set for opening the bids. The invitation for bids must be publicly advertised.
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services for the bidder to properly respond.
- All bids will be opened at the time and place prescribed in the invitation for bids. The bids must be opened publicly.
- A firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder.
- Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

### **Competitive Proposals**

A competitive proposal is normally used with more than one source submitting an offer, and either a fixed price or a cost-reimbursement type contract is awarded. (A cost-reimbursement contract reimburses the contractor for actual costs incurred to carry out the contract.) Competitive proposals are used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
- Proposals must be solicited from an adequate number of qualified sources.
- The district must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

When using federal funds, the district may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can

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only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms are a potential source to perform the proposed effort.

### **Professional and Consulting Services**

Several exceptions to following one of these competitive procurement methods are identified in TEC § 44.031. This section does not apply to a contract for *professional services* rendered, including services of an architect, attorney, certified public accountant, or engineer (which must be selected in accordance with [Chapter 2254 of the Government Code](#).) A school district may, at its option, contract for professional services rendered by a *financial consultant* or a *technology consultant* in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by this section.

The federal cost principles (specifically in 2 CFR § 200.459) broadly define *professional and consultant services* as those services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the District.

*Professional services* are further defined in the [Budgeting Costs Guidance Handbook](#) as “Professional, consulting, and contracted services are those services delivered by an independent contractor (individual entity or firm) who is not on your organization’s payroll and who offers its services to the public. Such services are paid on a fee basis for specialized services that are usually considered to be temporary or short-term in nature, normally in areas that supplement the expertise of your organization.” Finally, professional services as described in Attorney General Opinion DM-418, are further defined in the [Budgeting Costs Guidance Handbook](#).

Certain *professional services*, specifically those covered under Chapter 2254, Subchapter A of the Texas Government Code, (i.e., architects, CPAs, registered engineers, optometrists, physicians, surgeons, land surveyors, landscape architects, registered nurses and state certified or state licensed real estate appraisers) are not selected based on competitive bidding. Rather, they must be selected based on demonstrated competence and qualifications obtained through a *Request for Qualifications* or similar document. After the District makes its selection based on demonstrated competence and qualifications, a fair and reasonable price for the services is then negotiated and agreed upon.

*Consulting services*: According to [TEA Budgeting Cost Guidance](#), consulting services

*“Consulting services (6291) refers to the practice of helping districts to improve performance through analysis of existing problems and development of future plans. Consulting may involve the identification and integration of best practices, analytical techniques, change management and coaching skills, technology implementations, strategy development, or operational improvement.*

*Consultants often rely on their outsider’s perspective to provide unbiased recommendations. They generally bring formal frameworks or methodologies to identify problems or suggest more effective or efficient ways of performing tasks. Consulting services cover all functional areas such as instruction, curriculum, and administration. Consultants must be selected based upon demonstrated competence, qualifications,*

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*experience, and reasonableness of proposed fees. Consultant fees, travel costs, and costs for materials provided by the consultant are to be budgeted in 6200 and must be reasonable and necessary. Consulting services does not include a routine service/activity that is necessary to the functioning of a school district's programs, such as hiring additional people on contract to supplement present staff. It does not apply to services provided to conduct organized activities such as training, professional development, or other similar educational activities. It also does not include contracted services provided by an ESC.*

*The district shall use a consultant only if the services of the consultant are necessary to accomplish the objectives of the particular program/project, the fees are reasonable in cost, and the District cannot meet the needs by using an employee. 34 CFR 75.515. For example, an employee may have the knowledge, skills, and capability to provide the consulting services, but the employee may not have the time in an already-busy schedule to provide the consulting services in the time required.”*

Under IRS rules, a person cannot work part of the time as an employee, and part of the time as a contractor/consultant. If an employee provides additional services above and beyond his or her regular contracted hours and regular job responsibilities, the employee is paid *extra-duty pay* in accordance with the district's employee compensation policy, and not a fee based on a contract.

### **Allowable Professional Service Costs**

Professional and consultant services are allowable to be purchased with federal funds when reasonable and when the district considers the following factors:

- the nature and scope of the service rendered in relation to the service required;
- the necessity of contracting for the service, considering the district's capability in the particular area;
- The past pattern of such costs, particularly in the years prior to federal awards;
- The impact of federal awards on the district's business (i.e., what new problems have arisen);
- Whether the proportion of federal work to the district's total business is such as to influence the district in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under federal awards;
- Whether the service can be performed more economically by direct employment rather than contracting;
- The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities; and
- The adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

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## Noncompetitive Proposals (Sole Sourcing)

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used when using federal funds only when one or more of the following circumstances apply:

- The item is available only from a sole source and an equivalent cannot be substituted. This must be documented.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- TEA (or other federal awarding agency) expressly authorizes noncompetitive proposals in response to a written request from the district.
- After solicitation of several sources, competition is determined inadequate.

Additionally, state requirements related to sole source purchasing are, in some ways, more restrictive. In addition to the federal requirements above, sole source purchases must meet established criteria:

- Identification and confirmation that competition in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process, or monopoly,
- A film, manuscript, or book,
- A utility service, including electricity, gas, or water; and
- A captive replacement part or component for equipment.

According to state requirements, sole source does not apply to mainframe data-processing equipment and peripheral attachments with a single item purchase price more than \$15,000. In all cases, the district will obtain and keep documentation from the vendor which clearly delineates the reasons which qualify the purchase to be made on a sole source basis.

### Cost/Price Analysis for Federal Procurements in Excess of \$50,000

In accordance with the requirements in 2 CFR § 200.324, the district will make independent estimates of the goods or services being procured **before** receiving bids or proposals to get an estimate of how much the goods and/or services are valued in the current market.

To accomplish this, after bids and proposals are received, but before awarding a contract, the district conducts either a price analysis or a cost analysis, depending on the type of contract, in connection with every procurement with federal funds more than \$50,000. The method and degree of analysis is dependent on the facts surrounding the procurement situation; however, the district will come to an independent estimate prior to receiving bids, or proposals. 2 CFR § 200.324(a). The cost analysis or price analysis, as appropriate for the situation, will be documented in the procurement files. Accordingly, the district performs a cost or price analysis in connection with every federal procurement action of more than \$50,000, including contract modifications, as follows:

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**Cost Analysis → Non-competitive Contracts:** A cost analysis involves a review of proposed costs by expense category, and the federal cost principles apply, which includes an analysis of whether the costs are allowable, allocable, reasonable, and necessary to carry out the contracted services.

In general,

- A cost analysis must be used for all non-competitive contracts, including sole source contracts.
- The federal cost principles apply.
- All non-competitive contracts must also be awarded and paid on a cost-reimbursement basis, and not on a fixed-price basis.
- In a cost-reimbursement contract, the contractor is reimbursed for reasonable actual costs incurred to carry out the contract.
- Profit must be negotiated as a separate element of the price in all cases where there is no competition.

When performing a cost analysis, the Federal Funds Department/Director of Purchasing negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. 2 CFR § 200.3234b).

**Price Analysis → Competitive Contracts:** A price analysis determines if the lump sum price is fair and reasonable based on current market value for comparable products or services.

In general,

- A price analysis can only be used with competitive contracts and is usually used with fixed-price contracts. It cannot be used with non-competitive contracts.
- Compliance with the federal cost principles is not required for fixed-price contracts, but total costs must be reasonable in comparison to current market value for comparable products or services.
- A competitive contract may be awarded on a fixed-price basis or on a cost-reimbursement basis. If awarded on a cost-reimbursement basis, the federal cost principles apply and costs are approved by expense category, and not a lump sum.

Cost or prices based on estimated costs for contracts are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable costs under the federal cost principles.

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## CREDIT CARD PURCHASES USING FEDERAL FUNDS

Campuses and departments will follow the same process to make purchases using a credit card as they do with any purchase when using Federal funds. They must:

- Attempt to obtain three quotes from vendors providing like or equivalent products and/or services.
- When entering the requisition to the credit card vendor, the following documents must be attached:
  - A copy of the email sent to request the quote
  - A copy of each email sent to request the quote
  - A copy of each email response from the vendors
  - A copy of each vendor's quote
  - A price comparison worksheet
  - An electronically signed obligation form for the individual making the purchase
    - The requisition must have a line item for each item being purchased. No "as needed" requisitions can be entered when using federal funds.
  - Once the requisition becomes a purchase order the following process must be followed:
    - Only those items listed on the purchase order may be purchased
      - No substitutions are allowed when using federal funds
    - Only the quantities list on the purchase order may be purchased
    - Only purchase items that reflect the pricing on the purchase order
  - An itemized receipt must be returned with the credit card after the purchase has been made.
  - The purchaser is responsible for making sure the receipt is itemized, and no taxes are on the receipt. If taxes are listed, the purchaser is responsible for having the taxes removed and a new itemized receipt issued.

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## COMMODITY CODES – TEXAS DEPARTMENT OF AGRICULTURE (TDA) FUNDS

Following is a list of commodity codes used when purchases are made with TDA funds. This list is not all inclusive and may be updated throughout the year, when necessary.

2XX-TDA-01	Child Nutrition Courier Services
2XX-TDA-02	Child Nutrition Equipment
2XX-TDA-03	Child Nutrition Software Subscriptions
2XX-TDA-04	Child Nutrition Staff Training
2XX-TDA-05	Child Nutrition Supplies
2XX-TDA-06	Child Nutrition Technology Materials
2XX-TDA-07	Child Nutrition Materials
2XX-TDA-08	Child Nutrition Capital Equipment
2XX-TDA-09	Child Nutrition Maintenance Small Equipment/Materials

The three-quote requirement is not required when using TDA funds until the aggregate for each commodity code reaches \$9,999 within the budget year. After the commodity code reaches \$9,999, EDGAR compliance procedures must be followed.

Items purchased from the Technology Standards List using TDA funds do not require the three-quote requirement because the technology department has already completed the three-quote process prior to adding the items to the standards lists.

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# TEXAS PROCUREMENT PROCEDURES

This Procurement Procedures Manual (2 CFR 200.318) has been created to ensure that all purchases made with the Child Nutrition (CN) Federal Funds comply as regulated by all Federal, State, and Local written policy.

## **Grand Prairie ISD uses the following resources for all procurement methods:**

- Super Circular 2 CFR part 200
- Texas Department of Agriculture’s (TDA) “Administrative Review Manual,” Section 16 and 17 (including 17A), and the Education Department Guidelines and Regulations (EDGAR)

## **The following standards will be applied to all procurement methods. Solicitations will...:**

- Allow for “full and open” competition
- Be managed with integrity and fairness to all potential bidders
- Award responsive and responsible contractors
- Be fully documented to allow for complete transparency and follow the 5-year record retention requirement

Grand Prairie ISD allows the Child Nutrition Department to take part in the following:

- Agreements that identify participation level
  - Inter-governmental agreements (operator-only/ESC)
  - Third Party Cooperatives
  - Agents
- Informal Purchases
  - Micro-Purchase: any purchase that does not exceed the State threshold of \$10,000.
  - Small Purchase Acquisition: any purchase that exceeds \$10,000 but is not greater than the State threshold of \$50,000.
- Formal Purchases
  - Competitive Bid (IFB-Invitation for Bid)
  - Competitive Proposal (RFP-Request for Proposal)
  - Non-Competitive Proposal. TDA “pre-award approval” required
- Other Purchases
  - Sole Source – as determined through a failed procurement method due to no competition. Requires TDA approval prior to awarding the vendor or purchasing from the vendor.
  - Capital Expenditures – any single piece of equipment that exceeds \$5,000 in cost must be approved by TDA prior to purchase.

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**Grand Prairie ISD will use the following four (4) phases of procurement:**

- **Planning.** Below is a list of the first steps that will be taken prior to any purchase.
  - What is needed in the way of product/products and/or services?
  - When are the products or services needed?
  - What is the estimated cost of the products or services needed? Multiple resources will be used to determine an “estimate” of the value or cost. The cost/price analysis will be used to determine the most appropriate procurement method.
  - How will we pay for the products and/or services?
- **Forecasting.** Below is a list of the resources to be used for forecasting our needs.
  - We will review our past program to determine if the products or services were used in the previous program year.
  - Current program needs will be assessed, and product amounts and/or service needs will be determined.
  - Upcoming program years will be considered regarding future needs and possible renewal or extensions of contracts if necessary.
- **Soliciting.** The following general steps will be taken to start the solicitation process. Each procurement method is more specifically outlined later in this manual.
  - Based on the cost/price analysis in our planning phase, the most appropriate procurement method will be used.
  - A general specification with details will be written to document the product or service needed.
  - Terms and conditions of the contract will be outlined and reviewed to ensure the solicitation clearly describes our needs and the deliverables required.
  - Each solicitation will include the following information:
    - Deadline (date and time) the quotes or responses are to be received.
    - The method the quotes or responses are to be sent and to whom.
    - Evaluation criteria, if any is used, clearly outlined to include scoring rubric.
    - Date and time by which the solicitation will be awarded.
    - Term and Conditions of the contract and if any renewals or extensions are allowed.
    - All USDA Federal and State-required certifications and affidavits if applicable to the procurement method used.
  - Research will be done to identify potential suppliers.

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- **Awarding.** Based on the procurement method, the following general processes will be used:
    - A winner will be selected using the following methods.
      - Equitable distribution for all Micro-Purchases
      - Low bid winner for Small Purchases and IFB's
      - A single winner through evaluation criteria for Small Purchases and RFP's.
      - Pre-award approval must be obtained from TDA for any solicitation that is deemed non-competitive or sole source.
      - Multiple winners are selected for RFP's when a "line-item" award approach is taken to procure the best price for each product specified in the solicitation.
  - **Contract Management.** The following items will be monitored during the life of an awarded contract.
    - Quantities specified are made available and delivered.
    - Delivery times and schedules are being met per contract terms.
    - Product deliveries and/or services are occurring at the correct location if multiple locations are part of the awarded contract.
    - Products and/or services meet the specifications as described in the solicitation.
    - Substitutions of products are being managed as outlined in the Terms and Conditions and are adequate for the specified product.
    - Vendor response time to product or service issues is appropriate regarding each situation, if any.

### **Procurement Methods: Informal and Formal (2 CFR 200.320)**

Grand Prairie ISD will follow the steps below with each procurement method.

- **Micro-Purchases.** The micro-purchase method is an "Informal Procurement Method" for purchases where the aggregate value in a single transaction is at or below \$10,000. This enables the district to purchase supplies or services without soliciting competitive quotes if the school considers the price reasonable. The district may purchase products and/or services that are similar or dissimilar, purchased as a single or collective unit.
  - All **unplanned, non-routine** purchases with an aggregate total that does not exceed the threshold of \$10,000 are allowed (2 CFR 200.67) and will include:
    - Documentation that explains the reason for the purchase and vendor name.
    - List of items or service purchased.
    - Receipt.
    - All documentation will be kept in a file labeled "Micro-Purchases."
  - Types of Micro-Purchases allowed:
    - Emergency and/or equipment repair parts

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- Small to medium catering events
    - Emergency food shortages
    - Staff training and travel expenses
    - Small kitchen equipment purchases
  - The following employee positions have permission to make a Micro-Purchase:
    - Food Service Director; CN Director; Program or Operations Manager
    - Assistant Manager or Director; Purchasing Specialist; Business Office Manager
    - Cafeteria Director or Manager
  - Eligible vendors.
    - Equitable distribution of purchases will be made to all suppliers within proper proximity to the district's school sites
    - All suppliers within the county
    - Only district-approved and qualified suppliers
  - Payment for Micro-Purchases.
    - Credit card to be picked up from the Business Office/CFO
  - **Small Purchases.** The small purchase method is an “Informal Procurement Method” for purchases that exceed the micro-purchase threshold but have an aggregate amount no greater than the Simplified Purchase Acquisition threshold of \$50,000. The district must contact a minimum of three potential suppliers and attempt to get a minimum of two quotes.
    - Based on the determination through a cost/price analysis that a purchase will exceed the Micro-Purchase threshold (2 CFR 200.67) but will not exceed the State's/District's Simplified Purchase Acquisition (Small Purchase) threshold of \$50,000
    - Allowable types of Small Purchases:
      - Single/one-time purchase with an aggregate amount between \$10,000 < \$50,000
      - Multiple purchases of same or equivalent products and/or services from a prime vendor during the fiscal year with an aggregate amount between \$10,000 < \$50,000
    - Grand Prairie ISD will use the following steps to make a Small Purchase (2 CFR 200.320[b]):
      - Identify potential suppliers; who to contact for bids; what is available on the market.
      - Write the product and/or service specification to include details but not restrictive as to exclude competition.
      - Draft the solicitation to include contract terms and conditions, invoice methods, delivery and/or service requirements, duration of contract, and evaluation criteria if any is being used with the scoring rubric.
      - Contact a minimum of three vendors (if possible) and provide

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- each one with the same information to include all details of the solicitation. Emailed documents are the only method allowed – no verbal delivery of solicitation details is allowed.
- Document vendor responses include:
    - Vendor name and contact with email address and phone
    - Contact method
    - Price quoted to include the date received
    - Duration of the price quote
    - If less than three (3) quotes are received, an explanation of why this occurred will be included in the documentation
  - The award will go to the most responsive and responsible vendor with the lowest price or highest evaluation score if used. A responsive vendor is one whose response conforms to all the material terms and conditions of the solicitation. A responsible vendor is one whose financial, technical, and other resources indicate an ability to perform the services required.
  - All documentation will be kept in a file labeled “Small Purchase Acquisitions.”
  - The following employee positions have permission to make Small Purchases:
    - Food Service Director; CN Director; Program or Operations Manager
    - Assistant Manager or Director; Purchasing Specialist; Business Office Manager
    - Cafeteria Director or Manager
  - Eligible vendors:
    - All suppliers that have been identified as potential bidders
    - Only district -approved and qualified suppliers
  - Payment for Small Purchases.
    - Credit card to be picked up from the Business Office/CFO
    - PO to be created prior to the invoice payment. This is managed through the Business Office.
  - **Capital Expenditures.** Texas Department of Agriculture (TDA) requires a CE to get pre-approval on expenditures for food service equipment or alterations to equipment, only if the total equipment “per unit” cost is greater than \$5,000.
    - Grand Prairie ISD will submit a request for approval prior to purchasing the item via email to TDA including:
      - District Name, CE ID, and contact information (phone and email address)
      - Description of the equipment, including the purpose and how it supports the operation or maintenance of the district
      - Provide an estimated cost and whether we have sought bid

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- pricing
    - Describe how the old equipment (if any) will be disposed of and acknowledge that any proceeds from the disposal will be used to offset the cost of the replacement.
    - Acknowledge that any equipment purchased will be used exclusively (100%) by the district
  - **Competitive Sealed Bidding (IFB – Invitation for Bid).** The competitive sealed bidding method is a “Formal Procurement Method” that is used when the contract value is at or above the Small Purchase threshold, which is \$50,000 in the State of Texas. The formal procurement method requires a district to post a public advertisement in a newspaper of general circulation for two consecutive weeks upon release of the solicitation. It is recommended that the district post the advertisement on their website or a trade website as well as email or make phone calls as a means of advertising to potential bidders.
    - Grand Prairie ISD will ensure the following conditions:
      - A complete, adequate, and realistic specification or purchase description will be made available
      - The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price
      - Evaluation criteria will be included in the solicitation regarding determining a winner if the same price has been received from two or more different vendors
    - Grand Prairie ISD will adhere to the following requirements:
      - The solicitation will be publicly advertised
      - Provide detailed information such as response time, date, and time responses area to be received, how responses must be submitted, date and time of public opening, and other pertinent details.
      - Provide product and/or service specifications that allow multiple responses
      - Award the contract to the most responsive and responsible bidder. Factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest.
      - Any or all bids may be rejected if there is a sound documented reason.
    - The following employee positions will participate in the IFB Procurement Method:
      - Food Service Director; CN Director; Program or Operations Manager
        - Write product or service specifications
        - Write the solicitation document

- Send the IFB to potential suppliers
  - Participate in the opening of the submitted bid quotes and determine a winner
- Assistant Manager or Director; Purchasing Specialist; Business Office Manager
  - Write product or service specifications
  - Write the solicitation document
  - Send the IFB to potential suppliers
  - Participate in the opening of the submitted bid quotes and determine a winner
- Cafeteria Director or Manager
  - Write product or service specifications
  - Write the solicitation document
  - Send the IFB to potential suppliers
  - Participate in the opening of the submitted bid quotes and determine a winner
- Eligible vendors
  - All suppliers that have been identified as potential bidders
  - Only district-approved and qualified suppliers
- Payment for IFB Purchases
  - Purchase order to be created prior to the invoice payment. This is managed through the Business Office
- **Competitive Proposal (RFP – Request for Proposal).** A request for proposal is a “Formal Procurement Method” used for the purchases when an IFB is not appropriate. An RFP describes in a general way what is needed and requests that vendors submit a proposal for servicing the needs of the district. RFP’s can be used for either goods or services and require the prospective vendor to submit a technical proposal that explains how they will meet the objectives of the solicitation document and a cost element that identifies the costs to accomplish their proposal. Price is to remain the major consideration but can be one of many evaluation factors used to determine the most advantageous winner. The RFP also allows for negotiation to obtain the best value or price.
  - Grand Prairie ISD will ensure the following conditions:
    - A complete, adequate, and realistic specification or purchase description will be made available
    - The procurement lends itself to a firm fixed price contract or cost reimbursable price
    - The selection of the successful bidder will be made after an evaluation of criteria with price being the “heaviest weighted factor”
    - Negotiation of price or best value will be managed with complete fairness and integrity
  - Grand Prairie ISD will adhere to the following requirements and

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required documents (2 CFR 200.318-326):

- The solicitation will be publicly advertised
- Solicitation document will include a cover sheet with the RFP description, contact information, issue date, closing date, and opening date
- Written instructions and bidder information sheet to be completed by the proposer
- Clear product and/or service specifications
- Clear description of district demographics and product usage (as relevant)
- Clearly stated evaluation criteria to include scoring rubric
- Standard and/or Special Terms and Conditions of the contract
- Discounts, rebates, and/or credits provisions where applicable
- Questionnaires as appropriate
- Reference sheet
- Certifications per ARM Section 17 and Appendix II to Part 200 of 2 CFR 200:

Intangible Property	<a href="#">2 CFR 200.315</a>
Procurement of Recovered Materials/Solid Waste Disposal	<a href="#">2 CFR § 200.322</a>
Profit as a Separate Element of Price	<a href="#">2 CFR 200.323(b)</a>
Record Retention Requirements	<a href="#">2 CFR § 200.333</a>
Rights to Inventions	<a href="#">37 CFR §401.2 (a)</a>
Anti-trust Certification	Section <a href="#">2155.005</a>
Certification of Residency	<a href="#">Chapter 2252, Subchapter A</a>
Companies Engaged in Business with Iran, Sudan, or a Foreign Terrorist Organization	Chapter <a href="#">2252, Subchapter F</a>
Compliance with the Energy Policy and Conservation Act	<a href="#">Pub.L.94-163, 89 Stat.871</a>
Compliance with Texas Family Code Food/Product Recall and HACCP Procedures	Section <a href="#">231.006</a>
Form 1295	Section <a href="#">2252.908</a>
Health & Safety Certificates, Licensing and Regulation	<a href="#">ARM 17.62</a>
No Israel Boycott	Section <a href="#">2270.002</a>
Prohibited Employment Assistance	<a href="#">20 USC 7926</a>
Non-Collusion Declaration	<a href="#">Section 15.01</a>
Non-Collusion Affidavit	<a href="#">Section 15.01</a>

Signature and Declaration of Compliance	Notary of Public Required
Proposal Form	<a href="#">200.326 Appendix I To Part 200</a>
Breach of Contract Terms, Sanctions and Penalties	<a href="#">200.326 Appendix II to Part 200 (A)</a>
Termination for Cause or Convenience	<a href="#">200.326 Appendix II to Part 200 (B)</a>
Certificate of Insurance	<a href="#">2 CFR 200.447</a>
Cooperative Agreements	<a href="#">2 CFR 200.24</a>
Byrd Anti-Lobbying	<a href="#">2 CFR 200.450; 200.326 Appendix II Part 200 Sec. "I"</a>
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts	<a href="#">200.326 Appendix II to Part 200 Sec H</a>
Clean Air and Water Certificate	<a href="#">200.326 Appendix II Part 200 Sec. "G"</a>
Equal Opportunity Employment	<a href="#">200.326 Appendix II Part 200 Sec. "C"</a>
Contracting with Small, Minority, Women Business Enterprises, and Labor Surplus Area Firms	<a href="#">2 CFR 200.321</a>
Conflict of Interest Questionnaire	<a href="#">24 CFR § 3282.359</a>
Disclosure of Lobbying Activities	<a href="#">Appendix B To Part 418 2 CFR</a>
Felony Conviction Notification (Exhibit Only)	<a href="#">21 CFR 1301.90</a>
Nutrition Services Certification For “Buy American” Provision	<a href="#">7 CFR 210.21 Sec. D</a>
Nutrition Services “Buy American Waiver Exception List	<a href="#">7 CFR 210.21 Sec. D</a>
Certificate Regarding Worker's Compensation	<a href="#">48 CFR 970.2803-1</a>
Certificate Regarding Drug-Free Workplace	<a href="#">38 CFR § 48.635</a>
Certificate Regarding Alcoholic Beverage and Tobacco- Free Campus Policy	<a href="#">21 CFR § 1140.1</a>
E-Verify	<a href="#">48 CFR 52.222-54</a>
Iran Contracting	<a href="#">48 CFR 25.703-3</a>
Civil Rights/Discrimination	<a href="#">FNS Instruction 113-1</a>
W9	<a href="#">Most Current Version Required</a>
<ul style="list-style-type: none"> <li>▪ Awarding of the contract: <ul style="list-style-type: none"> <li>• Evaluation will consist of product quality, services, or past performance determined by references, but not limited to, along with price as the heaviest weighted factor</li> </ul> </li> </ul>	

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- Cost plus percentage of cost will not be allowed as a basis for award (2 CFR 200.320)
      - Any or all bids may be rejected if there is a sound documented reason
    - The following employee positions will participate in the RFP Procurement Method:
      - Food Service Director; CN Director; Program or Operations Manager
        - Write the product or service specifications
        - Write the solicitation document
        - Send the IFB to potential suppliers
        - Participate in the opening of the submitted bid quotes and determine a winner
      - Assistant Manager or Director; Purchasing Specialist; Business Office Manager
        - Write product or service specifications
        - Write the solicitation document
        - Send the IFB to potential suppliers
        - Participate in the opening of the submitted bid quotes and determine a winner
      - Cafeteria Director or Manager
        - Write product or service specifications
        - Write the solicitation document
        - Send the IFB to potential suppliers
        - Participate in the opening of the submitted bid quotes and determine a winner
      - Eligible vendors
        - All suppliers that have been identified as potential bidders
        - Only district-approved and qualified suppliers
      - Payment for RFP Purchase
        - Purchase order to be created prior to the invoice payment. This is managed through the Business Office
  - **Non-Competitive Negotiation and Sole Source Procurements.** These types of procurement methods are used to compensate for the lack of competition. This lack of competition may result from overly restrictive solicitation documents, an inadequate number of suppliers in the area or the procurement environment may have been compromised by inappropriate supplier actions (i.e., market allocation schemes). Non-competitive negotiation occurs after the solicitation (sealed bid, competitive negotiation, or small purchase) has been issued, but competition on that solicitation has been considered inadequate.
    - Non-competitive negotiations or sole source procurements are

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- restricted to specific situations and may only be used when:
- Inadequate competition in a formal procurement method
  - Public emergency exists
  - Goods or services are only available from one manufacturer through only one supplier
- Grand Prairie ISD will obtain TDA's approval prior to award and purchase of products or services. All requests for approval must be submitted through the State Agency's online system, TX-UNPS
  - The following employee positions will oversee the approval process for a Non-Competitive and/or Sole Source Procurement Method:
    - Food Service Director; CN Director; or Program or Operations Manager
    - Assistant Manager or Director; Purchasing Specialist' Business Office Manager
    - Cafeteria Director or Manager

### **Bid/Proposal Questions and Protest Procedures**

An interested party may protest in any of the following situations:

- Solicitation or other request for offers for a contract for the procurement of property or services
- Cancellation of a solicitation or other request
- Award or proposed award of contract
- Termination of a contract, if the protest alleges that the termination was based on improprieties in the administration of the contract

Grand Prairie ISD will do the following:

- Include clear instructions in each solicitation document about questions and protest procedures
- Follow all written procedures to resolve protests
- Ensure that all protests are resolved
- Retain all documentation related to a protest
- Notify TDA when a protest is received

Grand Prairie ISD will address all respondent protests within 24 hours of the bid award.

Grand Prairie ISD will provide evaluation scores and pricing at the request of the respondent. Violations of law should be referred to as the local, State, or Federal authority. (2 CFR, Section 200.318[k]).

Grand Prairie ISD will allow respondents to request clarification of information prior to the close of the bid/proposal. These requests must be received a minimum of three business days prior to the close of the bid/proposal.

Grand Prairie ISD will address the request for additional information as an addendum to all respondents.

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## **Economic Price Adjustments in Vendor Contracts**

The economic price adjustments, which allow a district to adjust costs in the contract, must be tied to an appropriate standard or cost index. Relating the price adjustments in a contract to an index allows the district to ensure that increases under the contract are not without basis. For example, if fuel prices are increasing drastically, an appropriate index such as the Consumer Price Index (CPI) will reflect this change.

This index is preferred because the USDA uses this index for the National School Lunch Program (NSLP) yearly funding increases. The intention is that if the USDA increased funding by a certain percentage the district would be able to allow the increase in food cost to rise at the same percentage. Vendors will be able to bid on multi-year contracts that allow for inflation and the district will be able to maintain a consistent level of service and food cost percentage from year to year.

## **Applying Geographic Preferences in Procurement**

As amended, the National School Lunch Act (NSLA) allows SFA's receiving funds through the CN Programs to apply a geographic preference when procuring unprocessed, locally grown, or locally raised agricultural products. This applies to operators of all School Lunch Programs.

Grand Prairie ISD will apply geographic preference to the procurement of agricultural products that:

- Are unprocessed
- Are locally grown or locally raised
- Have not been cooked, seasoned, frozen, canned, or combined with any other products

Because the NSLP is Federally Funded, geographic preferences cannot be restrictive to local definitions such as city, county, or state lines. Grand Prairie ISD determines local as "within the United States territory and within the State of Texas" (mileage may vary for items dependent on bidding preference).

## **Discounts, Rebates, and Credits**

Grand Prairie ISD requires that all discounts, rebates, and credits accrue back to the school nutrition account. The contractor will be required to identify the amount of each discount, rebate, or other applicable credit on bills and invoices presented to the Grand Prairie ISD. Contractors will be required to identify the method by which they will report discounts, rebates, and credits. All discounts will be tracked via monthly invoices or annual velocity reports. Contractors will be required to maintain documentation of costs, discounts, rebates, and credits and make those available to Grand Prairie ISD upon request.

## **Buy American Provision**

Grand Prairie ISD adheres to the Buy American Provision (7 CFR 210.21) when purchasing commercial food product to be served in the district's SNP meals. This provision will be included in all solicitations for food to be used in the school nutrition programs.

Per Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 {Public Law 105-336} added a provision, Section 12(n) to the NSLA (42 USC 1760(n)), requiring School Food

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Authorities (SFA's) to purchase, to the maximum extent practicable, domestic commodity or product. Section 12(n) of the NSLA defines "domestic commodity or product" as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. "Substantial" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Products from Guan, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States. The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards SFA's must comply with when purchasing commercial food products served in the school meals programs.

Grand Prairie ISD will purchase domestic food products per the Buy American Provision unless:

- The product needed is not produced or manufactured in the United States in sufficient and reasonable available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of the United States product are significantly higher than the non-domestic product.

Grand Prairie ISD will maintain all documentation regarding any food purchases that are deemed "non-domestic" to include cost comparisons if the product is available as a "domestic" product that is seen as unreasonable in cost; or if not available as a United States grown product the documentation will include the "country of origin."

### **Local Sourced Products: Farm to School Initiative**

Grand Prairie ISD is committed to local markets and family farmers in the State of Texas. Our objective is to support the local agricultural economy and reduce the environmental impact of long-distance shipping.

Grand Prairie ISD defines "Local Sources Products" as products that are grown within the State of Texas, with preference to sources located within one hundred miles of the school's main campus.

When purchasing local sourced products, Grand Prairie ISD will follow the planning phase as stated earlier in this manual and do a cost/price analysis to determine the most appropriate procurement method.

To encourage the bidders to purchase locally sourced produce, the Grand Prairie ISD may assign additional point values in the "Award of Contract" section of the solicitation that can demonstrate:

- The bidder is purchasing produce locally by submitting a list of local farmers, their addresses, the produce that is anticipated to purchase from each farm location, and the anticipated harvest date of the produce
- The bidder must also agree to the ability to submit a report during the term of the contract that demonstrates continued purchases from local farms

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## **Use of Excess and Surplus Property**

Grand Prairie ISD, to the best of the district’s ability, may utilize excess and surplus property when available. The TDA allows a district to use a significant portion of entitlement (PAL) allocation from USDA to purchase DOD fresh fruit and vegetable products. The TDA manages the solicitation and award of DOD Produce Vendors. Contracting Entities (CE’s) in the State of Texas and participating in the DOD Fresh Program can receive weekly deliveries as outlined in the awarded contract.

## **Cooperative Membership and Procurement**

The USDA allows for “Purchasing Goods and Services Using Cooperative Agreements, Agents and Third-Party Services.”

Grand Prairie ISD may participate in purchasing cooperative when it is determined to be in the best interest of the district. As a governmental agency, Grand Prairie has the option to legally join a “governmental agency or Education Service Center (ESC) agency” purchasing cooperative through an Interlocal or Inter Agency Agreement.

If determined in the best interest to join an ESC Agency cooperative, Grand Prairie ISD will request a copy of the Interlocal or Inter Agency Agreement and complete and submit to the appropriate contact of the co-op. Grand Prairie ISD will do the following once membership in the cooperative has been confirmed:

- Provide product estimated quantities planned for purchase for each bid selected.
- Review that all procurement documents and cooperative processes have been conducted in accordance with applicable Federal, State, and local regulations.
- Will confirm that their addition to any contract selected does not create a material change as outlined in the contract per 2 CFR 200.318[e] that states a material change occurs when the change in scope of the contract is significant enough that potential bidders might have bid differently had they been award of the impacts from adding additional agencies.
- Request access to all documentation related to the contract for compliance with records retention requirement to include but not limited to:
  - Solicitation
  - Verification of Published Advertisement
  - Contract Terms and Conditions
  - Evaluation Criteria if any
  - Responses
  - Notification of Awarded Vendor(s)
  - Documentation of any extensions or Amendments
  - Recall Procedures

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## Recalls

Grand Prairie ISD will use the following procedures regarding products that have been recalled, or are discovered to be defective or faulty:

- The Food Service Director/Manager/Program Coordinator will register for email notifications of recalled products through USDA Food Safety and Inspection Service ([usfsis@public.govdelivery.com](mailto:usfsis@public.govdelivery.com)) and/or [recalls.gov](http://recalls.gov) or any other viable resource regarding food and product safety and recalls
- Vendor's Recall procedures will be requested with every Small Purchase, IFB, and RFP procurement method used
- Any notices or alerts from awarded vendors or distributors regarding a recalled product will be handled immediately, following all instructions from the vendor or distributor regarding the handling of the recalled product
- Actions may include but not be limited to:
  - Disposal of all affected product
  - Photos of products affected, documentation of case lot numbers, distributor codes or any other pertinent information as documentation of product origin
  - Removal of affected product to a safe area to be picked up by the vendor or distributor
  - Credits issued for all affected product that could not be used

Sponsors are encouraged to verify State Agency and USDA requirements to ensure compliance.

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# TEXAS CODE OF CONDUCT

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

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.

As representatives of the Grand Prairie ISDs Student Nutrition 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 Grand Prairie ISD.

The Code of Conduct will be reviewed annually to ensure its relevance to current regulations.

The following Code of Conduct shall govern the performance, behavior, and actions of the Grand Prairie ISD Student Nutrition 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, director, or agent of the Grand Prairie ISD Student Nutrition 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, director, or agent of the Grand Prairie ISD Student Nutrition 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 Grand Prairie ISD Student Nutrition 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 Grand Prairie ISD Student Nutrition, the Superintendent's Cabinet shall determine whether the conflict is material under the circumstances.

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- The Grand Prairie ISD Student Nutrition 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.

Grand Prairie ISD requires that all employees involved in the procurement or contract awarded process adhere to the highest professional behavioral standards that include the upmost integrity, non-self-serving, be fair in all aspects of the procurement process, be alert to conflicts of interest, and avoid any comprising situation.

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

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

In accordance with the State of Texas Department of Agriculture (TDA) “Administrator’s Resource Manual” (ARM), Grand Prairie ISD Student Nutrition Department employees; officials; agents acting on the Grand Prairie ISD Student Nutrition Department behalf; any member of the immediate family of the Grand Prairie ISD Student Nutrition Department employee, officer, or agent acting on the Grand Prairie ISD Student Nutrition Department behalf; or business partner of the employee, officer, or agent acting on Grand Prairie ISD Student Nutrition 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 the law. A gift to a Public Servant is a Class A misdemeanor offense if the recipient is a government employee who exercises any influence in the purchasing process of the governmental body.

A Grand Prairie ISD Student Nutrition 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.

Grand Prairie ISD will apply disciplinary actions for violations of above stated standards by Grand Prairie ISD Student Nutrition Department employees, officers, or agents acting on the Grand Prairie ISD Student Nutrition Department behalf.

Grand Prairie ISD Student Nutrition Department requires any employee, officer, or agent acting on behalf of Grand Prairie ISD Student Nutrition Department to disclose in writing any situations where there is an appearance of incentives, gratuities, or kickbacks being received.

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

### **Conflict of Interests**

Regulations: 2 CFR Part. 318 (c)(1) and 7 CFR Part 210.21(c) State Procurement Code and Regulations, and Grand Prairie ISD Student Nutrition Department.

### **Procedures**

Grand Prairie ISD seeks to conduct all procurement procedures:

- In compliance with stated regulations, and to prohibit conflicts of interest and actions of employees engaged in the selection, award, and administration of contracts.

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 in situations such as the following:

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

Grand Prairie 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.

Section 173.003 of the Local Government Code requires certain local government officers to file Form CIS to disclose any income, gifts, or family relationships with current or future vendors. A local government officer is defined as a member of the governing body of a local government entity; a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity, or an agent of a local governmental entity who exercises discretion in the planning, recommending, selection, or contracting a vendor.

No employee, officer, or agent may take part in the selection, award, or administration of a contract supported by Federal, State or Local funds 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, or 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.

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The employee, officer, or agent will need to submit a Conflict-of-Interest Questionnaire (Form CIQ) to the Grand Prairie ISD Purchasing Department and remove himself/herself from the procurement process. The officers, employees, and agents of the entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

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

Grand Prairie 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 the document as witnesses.
2. 2<sup>nd</sup> Offense: Written reprimand. Two district staff will be present and sign the document as witnesses.
3. 3<sup>rd</sup> Offense: Recommendation for termination.

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

Grand Prairie 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 § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).*

Grand Prairie 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.*

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### **Less Than Arm's Length Transaction Disclosure – Related Party**

A related party is a person, place, or thing related to or closely held by another person, place, or thing. A transaction between the two is a less than an arm's length transaction. Federal regulations require that related party transactions be disclosed when federal funds are planned for the execution of such transactions. Failure to disclose these relationships inhibits the State agency's ability to make informed decisions regarding the allowability of the costs.

Grand Prairie ISD Student Nutrition Department employees; officials; agents acting on the Grand Prairie ISD Student Nutrition Department behalf; any member of the immediate family of the Grand Prairie ISD Student Nutrition Department employee, officer, or agent acting on the Grand Prairie ISD Student Nutrition Department's behalf; or business partner of the Grand Prairie ISD Student Nutrition Department employee, officer, or agent acting on Grand Prairie ISD Student Nutrition Department's behalf must disclose all transactions with related parties that result in a less than an arm's length transaction. This disclosure must be reported on the "Related Party – Less Than Arm's Length Transaction Disclosure Form." [Related Party Disclosure Form](#)

### **Benefits Received**

Grand Prairie ISD Student Nutrition Department employees; officials; agents acting on the Grand Prairie ISD Student Nutrition Department behalf; any member of the immediate family of the Grand Prairie ISD Student Nutrition Department employee, officer, or agent acting on the Grand Prairie ISD Student Nutrition Department's behalf; or business partner of the Grand Prairie ISD Student Nutrition Department employee, officer, or agent acting on Grand Prairie ISD Student Nutrition 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 Grand Prairie ISD Student Nutrition Department. Under no condition can the incentive become the property of an individual.

### **Certification Regarding Lobbying**

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

Grand Prairie ISD Student Nutrition Department uses the following procedures.

- **Documentation:** Grand Prairie ISD Student Nutrition Department will take actions to ensure that the proper documentation is prepared, shared as required, and retained.
- **Use of Funds:** Grand Prairie ISD Student Nutrition Department requires that federal funds must not be paid by or behalf of the Grand Prairie ISD Student Nutrition 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

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agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

### **Debarment and Suspension**

Grand Prairie 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 15.21.

- Grand Prairie ISD Student Nutrition 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 Grand Prairie ISD Student Nutrition 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. Grand Prairie 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.*
- Grand Prairie ISD Student Nutrition 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.
- Grand Prairie ISD Student Nutrition 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**

Grand Prairie ISD Student Nutrition Department does not allow any employee, officer or agent acting on behalf of Grand Prairie ISD Student Nutrition Department to take advantage of Grand Prairie ISD Student Nutrition Department’s procurement by purchasing off an awarded contract.

Per the ARM, Section 15.18, Confidentiality and Program Integrity, this type of activity is 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 pays

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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 15.20, 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 Offerors or Interested Parties Involved in Developing a Solicitation  
Grand Prairie ISD Student Nutrition 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.

### **Duplicative Services from the Same Contractor or Different Contractors**

Per the ARM, Section 15, Confidentiality and Program Integrity, when awarding a contract to an entity that has financial relationship with a third party acting on behalf of the CE constitutes an unfair advantage and is in violation of federal procurement requirements. This type of arrangement may also result in the CE paying for duplicative services, which is an unallowable cost to the nonprofit school food service account.

- Grand Prairie ISD will avoid acquisition of unnecessary or duplicative items/services. Purchases will be justified using the following criteria:
  - Purchaser will determine if there are like items in the district that may not be in use and consider transferring item before determining if purchase is necessary
  - The item is being considered for menus or is needed to serve, prepare, receive, transport, or store an item on the menu
  - The item is replacing an obsolete, broken, damaged or outdated piece of equipment

Grand Prairie ISD's procedures seek to avoid acquisition or duplicative items. Consideration is given to choosing a method of procurement to obtain a more economical purchase. Where appropriate, an analysis will be made to determine the most economical approach.

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Grand Prairie ISD will purchase goods, products, and/or services for use in the Child Nutrition Program in compliance with 2 CFR Part 200 and state laws using the procedures outlined as follows:

The primary purpose of this procurement plan is to ensure that open and free competition exists to the maximum extent possible. The procurement process practiced by the Grand Prairie ISD Student Nutrition Department must not restrict or eliminate competition (2 CFR Part 200.318(c)). For example, the description of goods, products, and/or services to be procured should not contain features that unduly restrict competition. Competition helps ensure that goods, products, and/or services will be obtained that best meet the needs of the Child Nutrition Program.

### **Food Taken from Schools**

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

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## PURCHASING VIOLATIONS

Failure of an employee to follow the above procedures constitutes a purchasing violation. Campus/Departments submitting a purchase requisition to the purchasing department for a good or service already ordered or received (after the fact) by the requesting campus/department will be subject to the following administrative actions:

- **First and Second Violation** – If the purchase violation is the employee/user’s first or second violation notice in a fiscal year, the Director of Purchasing will issue a letter to the employee/user responsible for making the commitment and the employee’s immediate supervisor/principal/director. The letter will inform the employee/user and supervisor/principal/director of the district’s guidelines, the proper purchasing procedures and any administrative actions that will be taken if additional violations. Additionally, a letter will be mailed to the vendor to inform them of the district’s purchasing guidelines which require a purchase order prior to filling an order for delivery good and/or services.
- **Third and Subsequent Violations** – If an employee/user has more than one or two purchase violations within a fiscal year, the Director of Purchasing will issue a letter to the employee/user responsible for making the commitment and the individual’s supervisor/principal/director. The letter will inform the employee/user and the employee’s direct supervisor of the district’s guidelines and the proper purchasing procedures. The letter will also require the person responsible for the purchase to submit a memorandum to the Deputy Superintendent of Business Operations explaining why the proper purchasing procedures were not followed and what actions will be taken in the future to avoid additional violations.
  - Based upon the justification provided, the district may take any action(s) considered appropriate for the infraction. Actions may include, but are not limited to, the following:
  - Accepting the explanation, approving the purchase, and paying the invoice,
  - Issuing a warning letter,
  - Issuing a letter of reprimand, or
  - Requiring the employee to pay for the goods and/or services.

To ensure non-compliance does not occur, each department/campus budget manager will be responsible for ensuring all requisitions have all proper documentation, budget coding, etc. This responsibility must occur every time a requisition is in the approval queue to process.