

Requirements and Restrictions for Procurement Under a Federal Award - Competition

The following shall be required in the case of procurement under a federal grant to ensure adequate competition.

Geographical Preferences Prohibited

The District shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Buy American and School Meals

When making purchases for the District's school lunch program, the District shall, to the maximum extent practicable, purchase domestic commodities or products.

For the purposes of this procedure, "domestic commodity or product" shall mean:

1. An agricultural commodity that is produced in the United States; and
2. A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

Substantially using agriculture commodities that are produced in the United States means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.

(2) In general. Subject to paragraph (d)(4) of this section, a school food authority must purchase, to the maximum extent practicable, domestic commodities or products.

(3) Required language. School food authorities must include language requiring the purchase of foods that meet the Buy American requirements in paragraph (d)(1) of this section in all procurement procedures, solicitations, and contracts.

(4) Limitations. Paragraphs (d)(2) and (3) of this section apply only to:

- (i) A school food authority located in the contiguous United States; and
- (ii) A purchase of domestic commodity or product for the school lunch program under this part.

(5) Exceptions. The purchase of foods not meeting the definition in paragraph (d)(1) of this section is only permissible when the following criteria are met:

(i) The school food authority determines that one of the following limited exceptions is met:

(A) The product is listed in the Federal Acquisitions Regulations (FAR) at 48 CFR 25.104 and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or

(B) Competitive bids reveal the cost of a United States product is significantly higher than the non-domestic product.

(ii) Non-domestic food purchases (those that do not meet the definition of domestic commodity or product, as defined in paragraph (d)(1) of this section) must not exceed the following caps by the established deadlines:

(A) By July 1, 2025, non-domestic food purchases must not exceed 10 percent of total annual commercial food costs that a school food authority purchases per school year.

(B) By July 1, 2028, non-domestic food purchases must not exceed 8 percent of total annual commercial food costs that a school food authority purchases per school year.

(C) By July 1, 2031, non-domestic food purchases must not exceed 5 percent of total annual commercial food costs that a school food authority purchases per school year.

(iii) School food authorities must maintain documentation, except when the item purchased is found on the FAR at 48 CFR 25.104 when using an exception under paragraph (d)(5)(i) of this section.

(iv) School food authorities must maintain documentation, to demonstrate that when using an exception under paragraph (d)(5)(i) of this section their non-domestic food purchases do not exceed the annual threshold specified in paragraph (d)(5)(ii) of this section.

(6) Harvested fish. To meet the definition of a domestic commodity or product, harvested fish must meet the following requirements:

(i) Farmed fish must be harvested within the United States or any territory or possession of the United States; and

(ii) Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.

(8) Temporary accommodation. For school food authorities that demonstrate they cannot meet the threshold, State agencies may provide an accommodation for temporary relief from the requirement as the State agency works with the school food authority to increase domestic purchases.

Additionally, the District shall require school meal program suppliers to attest that their final food products are either 100% domestic commodities or a food product containing over 51% domestic food components, by weight or volume.

A school food authority participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products, including the use of “locally grown”, “locally raised”, or “locally caught” as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied, so long as there are an appropriate number of qualified firms able to compete.

Exceptions to this Buy American requirement may be made when the District determines that:

1. The food or food product is not produced or manufactured in the United States in sufficient or reasonably available quantities of a satisfactory quality; or
2. Competitive bids reveal the cost of a United States food or food product is significantly higher than the don-domestic product.

When such an exception is made, the Superintendent or his or her designee shall document such exceptions.

Prequalified Lists

The District shall ensure 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. Also, the District shall not preclude potential bidders from qualifying during the solicitation period.

Solicitation Language

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

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers shall be clearly stated; and identify all requirements which the offers must fulfill and all other factors to be used in evaluating bids or proposals.

Contracting with Small and Minority Businesses and Women’s Business Enterprises

When soliciting goods and services on projects that will use federal funds, the District shall comply with the following requirements for the purpose of ensuring small business, minority-owned businesses and women’s business enterprises are to be used whenever possible:

