

Michigan Department of Education

School Nutrition Programs

Procurement Procedures Guide

Disclaimer: This is a training document, it is not legal advice, and may not be all-inclusive. It should be used as a reference when updating procurement procedures or policy documents. The Sponsor is responsible for ensuring that all procurement procedures comply with all federal regulations, state procurement code and regulations, and local procurement policies. This is intended as an example only, and Sponsors should not adopt this for use in place of their own procurement procedures.

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Furthermore, MDE does not endorse, nor does it guarantee the use of information and/or language contained in any procurement template or resource. Information has been gathered from multiple sources and is not the sole product of MDE. Resources are meant to be utilized as a starting point to help Sponsors develop an understanding of what goes into a solicitation document for the procurement of a vendor or distributor to provide goods or services. Sponsors should develop their own internal solicitation and procurement processes and procedures that are representative of their unique local purchasing requirements. Read each section carefully and thoroughly.

ABC School District
**Procurement Procedures
For School Nutrition Programs**

This procurement plan will be implemented on January 1, 2024
from that date forward until amended.

Food Service Director
Judy Apple

Date 12/1/2023
Judy Apple

Business Official
Robert Orange

Date 12/1/2023
Robert Orange

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Section I - Procurement Plan/Procedure Requirements

The plan for ABC School District is to procure items for use in the School Nutrition Programs (SNP) and are as follows:

- A. The procurement plan provides for free and open competition, transparency in transactions, comparability, and documentation of all procurement activities.

- B. The following Code of Conduct will be expected of all persons who are engaged in the awarding and administration of contracts supported by the non-profit school food service account. These written standards of conduct include:
 - 1) No employee, officer, or agent shall purchase or establish a contract if a conflict of interest, real or apparent, would be involved. Conflicts of interest arise when one of the following has a financial or other interest in the firm selected for the award:
 - The employee, officer, or agent
 - Any member of the immediate family
 - Her or his partner
 - An organization that employs or is about to employ one of the above
 - 2) Employees, officers, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
 - 3) Disciplinary actions will result from any violation of the code of conduct. The disciplinary actions should be in accordance with the ABC School District’s policies.

- C. Regardless of procurement method, the following factors will be determined regarding the allowability of costs:
 - Be necessary and reasonable for proper and efficient administration of the program(s)
 - Be allocable to federal awards and applicable to the administration of the program(s)
 - Be authorized and not prohibited under state and local law.

- D. Purchasing will be conducted at the most restrictive procurement threshold:

**ABC School District
Procurement Threshold**

Micro-Purchase	Less than \$10,000
Small Purchase	Less than \$150,000
Formal Purchase	Greater than \$150,000
Capital Equipment	Greater than \$5,000

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

F. When purchasing, it will be the responsibility of the Food Service Director to document the amounts to be purchased so the correct method of procurement will be followed.

G. All purchasing records must be maintained no less than the current year plus three additional years.

H. **Buy American Provision**

All solicitations that involve the purchasing of a food component shall include a requirement that the ABC School District purchase domestic commodities to the maximum extent practicable and shall include procedures for limited exceptions. ABC School District will maintain records documenting any exceptions to the Buy American Provision.

ABC School District will include the following Buy American language in solicitations:

The ABC School District participates in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A 'domestic commodity or product' is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d).

Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved upon request. To be considered for an alternative or exception, the request must be submitted in writing to the Food Service Director, a minimum of three days in advance of delivery. The request must include the:

- Price of the domestic food alternative substitute(s); and
- Availability of the domestic alternative substitute(s) in relation to the quantity ordered.
- Reason for exception: limited/lack of availability or price (include price):
 - (a) Price of the domestic food product; and
 - (b) Price of the non-domestic product that meets the required specification of the domestic product.

I. **Geographic Preference**

Per [USDA SP 22-2024, CACFP 08-2024, and SFSP 13-2024](#), the use of statutorily or administratively imposed in-state or local geographic preferences for procurements under USDA entitlement programs is prohibited, except for unprocessed locally grown or locally raised agricultural products. When geographic preference is used, ABC School District must still get quotes from

several suppliers when procuring unprocessed locally grown or locally raised agricultural products so that competitors have an opportunity to compete for the bid.

J. Protest Procedures

ABC School District will include the following written protest procedures in all solicitations:

Any bidder, person, or entity may file a bid protest with the ABC School District. The protest shall specify the reasons and facts upon which the protest is based and shall be filed, in writing, to the ABC School District no later than three business days after the date of the Bid award or notice of unsuccessful bid. ABC School District will investigate the basis for the Bid protest and analyze all facts. ABC School District will notify the Bidder whose Bid is the subject of the Bid protest of evidence found as a result of the investigation and allow the Bidder to rebut such evidence and permit the Bidder to present any evidence that the bid and/or contract award was done in an unfair or biased manner. ABC School District will issue a written decision within 15 business days following receipt of the Bid protest unless factors beyond ABC School District's reasonable control prevent such a resolution, in which event such decision will be issued as expeditiously as circumstances reasonably permit. The decision will state the reasons for the action taken by ABC School District. A copy of this decision will be furnished to the protestor and any other parties affected.

K. Minority and Women's Businesses

The ABC School District will take all necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring awarded vendor to follow the above Minority and Women's Businesses guidelines if hiring or contracting to other/additional vendors

Section II - Equipment Purchasing

If the dollar amount of purchases for equipment is greater than ABC School District's local capitalization threshold of \$5,000, the following process will be conducted:

1. Review the [Pre-approved Food Service Equipment List](#). If the equipment is listed, no further approval from MDE is required.
2. If the equipment is allowable but **not** on the Pre-approved List, MDE must approve the equipment before it can be purchased. ABC School District will complete the [Equipment and Other Capital Expenditure Request Form](#) for MDE approval.
3. ABC School District will get quotes or formal bids using the proper procurement method based on set thresholds and purchasing policies.
4. ABC School District shall keep documentation of approval and all documentation related to the procurement of capital equipment¹.

Section III - Micro-purchasing

When utilizing the micro-purchasing procurement method:

- Purchase prices shall be reasonable.
- ABC School District will distribute purchases equitably among qualified suppliers to the best of their ability. If unable to spread purchases, documentation for the purchase is required (example: the next grocery store is located 50 miles away from the school or district).

Section IV - Informal/Small Purchase Procurement

If the dollar amount of purchases for items is less than the ABC School District's small purchase threshold, the following small purchase procedures including quotes will be used. At least three written quotes from qualified sources are required.

1. Clear and accurate descriptions of the technical requirements provided for the product, or service being procured shall be provided.
2. ABC School District shall not restrict competition in any way, including unreasonable requirements, excessive bonding, or specifying a brand name without allowing an equal product to be bid.
3. Buy American requirements shall be included when applicable.
4. The Food Service Director will be responsible for contacting potential vendors when price quotes are needed.
5. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications.
6. The price quotes will receive appropriate confidentiality before award.

¹ Capital Equipment is tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the sponsor for financial statement purposes, or \$5,000.

7. Quotes will be awarded by the Food Service Director. Quotes will be awarded to the lowest and best quote based on price, quality, service, delivery, availability, and [insert other criteria, if applicable].
8. The Food Service Director will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications.
9. The Food Service Director will be responsible for documentation that the actual product specified is received.
10. Any time an accepted item is not available, the Food Service Director will select the acceptable alternate. Full documentation will be made available as to the selection of the acceptable item. Substituted items will not be made at the vendor's discretion.
11. Quotes/bids will be awarded on the following criteria. The price must be the highest weighted criteria. Examples of other possible criteria include:
 - Price
 - Quality
 - Service
 - Delivery
 - Availability
 - Communication
 - Management Support
 - Problem Resolution
 - Training Programs
12. The Food Service Director is required to sign all quote tabulations, signifying a review and approval of the selections.

Section V - Formal Procurement

When a formal procurement method is required, the following competitive sealed bid or an invitation for bid (IFB) ² or competitive proposal in the form of a request for proposal (RFP) ³ procedures will apply:

1. An announcement of an invitation for bid (IFB) or a request for proposal (RFP) will be placed on *www.xyzbidfinder.net* to publicize the intent to purchase needed items. The advertisement for bids/proposals or legal notice will be run for 30 days. The public advertisement should include:
 - a) A general description of items to be purchased.
 - b) The deadline for submission of questions and the date written responses will be provided including an addendum to bid specifications, terms, and conditions as needed.

²In awarding an **Invitation for Bid (IFB)** a firm fixed price is awarded to the bidder that is most responsive and responsible and is the lowest in price. An IFB must result in a fixed fee/firm fixed price contract.

³ In awarding a **competitive negotiation (RFP)** a set of award criteria in the form of a weighted evaluation sheet will be provided to each bidder in the initial bid document materials. Price alone is not the sole basis for award but remains the primary consideration when awarding a contract. Price does not have to be 51% of points but must be the highest weighted criteria.

- c) A date of pre-bid meeting, if applicable, and if attendance is a requirement for bid award.
 - d) A deadline for submission of sealed bids or proposals, and address of location where complete specifications and bid forms may be obtained. ABC School District will allow 45 days for IFBs and 60 days for RFPs for submission from the time the information is given to vendors until the time of the bid opening.
2. In an Invitation for Bid (IFB) or Request for Proposal (RFP), each vendor will be given an opportunity to bid on the same specifications.
 3. Any person who develops written specifications or descriptions for procurements will be prohibited from submitting bids or proposals for such products or services.
 4. The IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the solicitation document:
 - ABC School District contact and pertinent information.
 - A clear and accurate description of the goods and services to be procured.
 - ABC School District shall not restrict competition in any way, including unreasonable requirements, excessive bonding, or specifying a brand name without allowing an equal product to be bid.
 - Contract period
 - ABC School District is responsible for all contracts awarded (statement).
 - Date, time, and location of bid/ proposal opening. (IFB requires a public opening)
 - How a vendor will be informed of bid/proposal acceptance or rejection.
 - The terms and conditions which the bidder/proposer must fulfill.
 - Statement assuring efforts will be made to involve minority and small business.
 - Protest procedures
 - Technical requirements, specifications, and forecasted quantities.
 - Proposal withdrawal procedures
 - Options for “piggybacking” or adding new products if applicable.
 - Type of contract to be awarded (IFB- fixed price only, RFP- fixed price or cost-reimbursable)
 - Criteria for award and method for evaluating cost.
 - (Cost-reimbursable contracts only) Statement regarding the return of purchase incentives, discounts, rebates, and credits to the non-profit Child Nutrition account.
 - All required federal contract provisions (as applicable) outlined in 2CFR200 Appendix II.

5. Specifications and estimated quantities of products and services prepared by ABC School District and provided to potential contractors desiring to submit bids/proposals for the products or services requested.
6. If any potential vendor asks questions regarding the specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the Food Service Director and date answers will be provided will be specified.
7. The Business Manager will be responsible for securing all bids or proposals.
8. The Business Manager will be responsible for ensuring all Sponsor procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.

Evaluation Criteria ABC School District can use to award an RFP.

*(Price must be given the highest points and the award must equal 100 points).
District may tailor evaluation criteria to each procurement as appropriate.*

51 Price and 49 for all others

Weight (points)	Criteria
	Price
	Service Capability
	Quality
	Experience, References
	Business Practices
	Accounting and Reporting System
	Etc.
	Etc.
100 points	TOTAL

Required Contract Provisions

a. Contractual Procedures

Contracts for **more than \$250,000** must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

b. Termination Clause

All contracts in excess of \$10,000 must address:

- Termination for cause and for convenience by the non-Federal entity, and
- The manner by which it will be affected and the basis for settlement.

ABC School District shall use the following sample language in solicitations as applicable:

Termination for Cause:

Except as may be otherwise provided by this document, the awarded contract may be terminated in whole or in part by either party to the awarded contract in the event of failure by the other party to fulfill its obligations under the awarded contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given:

- At least 30 days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and
- An opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten business days or such other reasonable amount of time as may be required under the circumstances, to rectify the defects in products or performance, prior to termination.

Termination for Convenience

ABC School District may terminate an award prior to the expiration of the term, without cause and without penalty, upon 30 days written notice to the selected Vendor.

c. Equal Employment Opportunity

ABC School District shall include the following sample language in solicitations as applicable:

The vendor certifies it is an Equal Opportunity Employer, a provider of services and/or assistance, and is in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, and Executive Orders 11246 and 11375. The vendor assures compliance with the Americans with Disabilities

Act of 1990 (Public Law 101-336), all amendments to, and all requirements imposed by the regulations issued pursuant.

d. **Davis-Bacon Act**

When required by Federal program legislation, all **prime construction contracts of more than \$2,000** awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

- a. In addition, contractors must be required to pay wages not less than once a week.
- b. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.
- c. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.
- d. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- e. The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- f. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

e. **Contract Work Hours and Safety Standards Act**

Where applicable, all contracts awarded by the nonfederal entity in **excess of \$100,000 that involve the employment of mechanics or laborers** must include a provision for compliance with 70 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and

provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

- **Laborers and mechanics.** This chapter applies to all laborers and mechanics employed by a contractor or subcontractor in the performance of any part of the work under the contract—
 - (A) including watchmen, guards, and workers performing services in connection with dredging or rock excavation in any river or harbor of the U.S., a territory, or the Sponsor of Columbia; but
 - (B) Not including an employee employed as a seaman.

f. **Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of “**funding agreement**” under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Notes: reference the following definition of terms for this section:

- 37 CFR § 401.2 Definitions. As used in this part— (a) The term **funding agreement** means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
- 2 CFR §200.86 **Recipient.** Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include sub-recipients. See also 2 CFR §200.69 Non-Federal entity.
- 2 CFR §200.93 **Sub-recipient.** Sub-recipient means a non-Federal entity that receives a sub-award from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A sub-recipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

g. Clean Air Act

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671g](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

h. Debarment and Suspension Certification

ABC School District will use the following sample language when adding a clause to a solicitation/contract with a vendor:

The Vendor certifies that neither the Vendor or its principals; the sub-recipients or their principals; or the subcontractors or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal government pursuant to Executive Orders 12549 and 12689. The Vendor specifically covenants that neither the Vendor nor its principals; the subcontractors or their principals; or the sub-recipients or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA"). By responding to this solicitation, the Vendor is certifying they are in "Good Standing".

i. Lobbying Certification

The Byrd Anti-Lobbying Amendment requires a lobbying certification to be obtained for procurement contracts of more than \$100,000. For any vendor whose contract award is for more than \$100,000, ABC School District will require the vendor to complete a Certification Regarding Lobbying form. ABC School District will keep this signed certification statement on file with a copy of the vendor's contract.

Section VI - Non-Competitive Procurement

Non-competitive (sole source) procurement are purchases of a specific item which is available from only one contractor who is the sole manufacturer and distributor of the item. The school food service department must document its justification for needing the item and why only this specific item will meet this need.

When faced with a sole source procurement, ABC School District must obtain MDE approval, and then go directly to the one source to negotiate terms, conditions, and prices.

If ABC School District receives an inadequate number of responses to its solicitation and it is determined the procurement resulted in a lack of competition, ABC School District will review the solicitation document to ensure no overly restrictive requirements or specification were used, an inadequate number of contractors were solicited, or not enough time was provided for contractors to respond to the solicitation document.

If items are available **only** from a single source **when the award of a contract is not feasible under small purchase, sealed bid, or competitive negotiation**, **Non-Competitive Procurement** procedures will be used:

1. Written Specifications will be prepared and provided to the vendor.
2. The Food Service Director will be responsible for the documentation of records to fully explain the decision to use the noncompetitive negotiation. The records will be available for audit and review.
3. The Food Service Director will be responsible for reviewing the procedures to be certain all requirements for using single source or noncompetitive negotiation are met.

Section VII - Emergency Purchasing

1. If it is necessary to make a one-time emergency procurement to continue service or obtain goods, the purchase shall be made, and a log of all such purchases shall be maintained by the district. The following emergency procedures shall be followed. All emergency procurements shall be approved by the Food Service Director. At a minimum, the following emergency procurement procedures shall be documented:
 - item name
 - dollar amount
 - vendor
 - reason for emergency
2. If the emergency purchasing need requires a contract, all books, records, and other documents relative to the award of the contract must be retained for three years (or until a procurement audit has been completed) after final payment. Specifically, ABC School District shall maintain, at a minimum, the following documents:
 - Written rationale for award cost or price.
 - A copy of the original solicitation.
 - The bidding and negotiation history and working papers.
 - The basis for contractor selection.
 - Approval from the State agency to support a lack of competition when competitive bids or offers are not obtained.
 - The terms and conditions of the contract.
 - Any changes to the contract and negotiation history.
 - Billing and payment records.
 - A history of any contractor claims.
 - A history of any contractor breaches

This document is a guide, is not legal advice, and may not be all-inclusive. The Sponsor is responsible for ensuring that all procurement procedures comply with all federal regulations, state procurement code and regulations, and local procurement policies.

USDA Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: [USDA Program Discrimination Complaint Form](#), from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. mail:

U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or

2. fax:

(833) 256-1665 or (202) 690-7442; or

3. email:

Program.Intake@usda.gov

This institution is an equal opportunity provider.