Windover High School

Disclaimer: This document is a sample and is not intended to be all inclusive of federal, state, and local procurement regulations. A School Food Authority that participates in Child Nutrition Programs is ultimately responsible to ensure that the plan complies with all Federal Regulations, State Procurement Regulations and local procurement policies.

Windover High School

PROCUREMENT PLAN
FOR CHILD NUTRITION PROGRAMS

This procurement plan will be implemented on 8/1/2024 from that date forward until amended.

Carrie Ellis — 8/1/2024

Food Service Director — Date

Scott Hewitt — 8/1/2024

Business Official — Date

SECTION I- Procurement Plan Requirements

The plan for Windover High School is to procure items for use in the Child Nutrition Programs and is 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:
    a. No employee, officer, or agent shall purchase or establish a contract if a conflict of interest, real or apparent, would be involved. Conflicts of interest arise when one of the following has a financial or other interest in the firm selected for the award:
        - 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
    b. Employees, officers, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements.
    c. The purchase during the school day of any food or service from a contractor for individual use is prohibited.
    d. Disciplinary actions will result from any violation of the code of conduct. The disciplinary actions should be in accordance with the SFA/LEA's policies.

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

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

	Federal Procurement Threshold	**SFA/LEA Procurement Threshold**
Micro-Purchase	Less than $10,000	
Small Purchase	Less than $250,000	
Formal Purchase	Greater than $250,000	
Capital Equipment	Greater than $5,000	

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

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

g. **Buy American Provision**

Section 104(d) amended Section 12(n) of the National School Lunch Act (NSLA) (42 U.S. 1760) to require SFAs participating in the NSLP and SBP in the United States to purchase for those programs, to the maximum extent practicable, domestic USDA Foods or products. For purposes of this provision, the term domestic food commodity or product means an agricultural commodity produced in the United States, including Guam, American Samoa, the Virgin Islands, Puerto Rico, and the Northern Mariana Islands, and food products processed in the United States SUBSTANTIALLY using agricultural USDA Foods that are produced in the United States. For products procured by SFAs for use in the Child Nutrition Programs, the food component of the product is the agricultural commodity. FNS defines food component as one of the food groups which comprise reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk.

All solicitations that involve the purchasing of a food component shall include a requirement that the SFA purchase domestic commodities to the maximum extent practicable and shall include procedures for limited exceptions. The SFA shall include following language in solicitations:

The Windover High School participates in the National School Lunch Program and School Breakfast Program 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 a designated official, a minimum of ___day (s) in advance of delivery. The request must include the:

(1) Alternative substitute(s) that are domestic and meet the required specifications:

(a)Price of the domestic food alternative substitute(s); and

(b) Availability of the domestic alternative substitute(s) in relation to the quantity ordered.

(2) 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 require specification of the domestic product.

***See Appendix A for a Buy American Exception worksheet.**

h. **Geographic Preference**

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. The Food, Conservation, and Energy Act of 2008 (Public Law 110- 246, Section 4302) amended Section 9(j) of the NSLA to allow institutions receiving funds through CNP to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When geographic preference is used, an SFA 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.

***See resources for more information on local purchasing and geographic preference.**

i. **Protest Procedures**

Protest procedures are required. SFAs will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protester must exhaust all administrative remedies with the SFA before pursuing a protest with a federal agency. Reviews of protests by the federal agency will be limited to:

a. Violations of federal law or regulations and the standard of 2 CFR 200.318(k) (violations of state or local law will be under the jurisdiction of state or local authorities).
b. Violations of the SFA's protest procedures for failure to review a complaint or protest. Protests received by the federal agency other than those specified previously will be referred to the SFA

The SFA shall include the following written protest procedures in all solicitations:

Any bidder, person, or entity may file a bid protest with the Windover High School. The protest shall specify the reasons and facts upon which the protest is based and shall be filed, in writing, to the Windover High School no later than 3 business days after the date of the Bid award or notice of unsuccessful bid. Windover High School will investigate the basis for the Bid protest and analyze all facts. The Windover High School will notify the Bidder whose Bid is the subject of the Bid protest of evidence found as a result of the investigation, and afford the Bidder an opportunity 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. The Windover High School will issue a written decision within 15 business days following receipt of the Bid protest, unless factors beyond the Windover High School 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 Windover High School. A copy of this decision will be furnished to the protestor and any other parties affected.

j. **Minority and Women's Businesses**

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

a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
c. 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;
d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
e. 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
f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

k. **Beverage and Snack Agreement**

In some cases, the LEA's exclusive beverage contracts do not involve nonprofit school food service account funds, in which case there are no federal FNS procurement issues involved. However, if any products are purchased via the exclusive beverage contract using nonprofit school food service funds, then all federal procurement requirements must be met. If small purchase procedures are used for a procurement of $250,000 or less, price or rate quotations must be obtained from an adequate number of qualified sources. Additionally, if nonprofit school food service products are included in the contract, any rebates, commissions, scholarship fund contributions, or any other payments back to the SFA or SFA-related organizations must be reimbursed to the nonprofit SFSA on a prorated basis.

a. There is no federal prohibition on multiyear contracts other than for Food Service Management Companies (FSMC). It is suggested, however, that school procurement officials consider the impact of multiyear contracts, as opposed to one-year contracts, on beverages and snacks. Long-term contracts would appear to be more appropriate for nonperishable products and services such as warehousing and equipment rental. As noted above, however, there is no federal prohibition on these longer-term contracts.
b. Public Law 108-265, Section 102, requires a school participating in the NSLP shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place on the school premises or at any school-sponsored event during the extended school day.
c. Schools participating in the NSLP must check all beverage contracts for

language that may limit the sale of milk on school grounds. The sale of milk cannot be limited at any time during the extended school day or at any place on the school premises. Contracts may have language that is hard to understand. Look for the term Exclusive Pouring Rights. Every school LEA must have amended their beverage contracts that limit the sale of milk should such language exist. The primary effect of this provision is to prevent contract limitations on the sale of fluid milk in competition with other beverages.

SECTION II – PURCHASING EQUIPMENT

If the amount of purchases for equipment is greater than $5,000 or the SFA/LEA's local capitalization threshold, the following procedure will be used.

1. Complete the Equipment Purchase Approval Tree to determine if the equipment purchase is allowable and if the equipment is on the Prior Approved List.
    a. If the equipment is allowable and on the prior approved list, keep the Approval Tree for SFA records. The SFA may purchase the equipment and **does not** need further approval. The price quotes will receive appropriate confidentiality before award.
2. If the equipment is allowable but it is **not** on the Prior Approved List, MDE must approve the equipment before it can be purchased by the SFA. SFA will complete the Capital Equipment Approval Form for MDE approval.
3. SFA shall keep documentation of approval and all documentation related to the procurement of capital equipment.

Capital Equipment is defined by Federal regulations as 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 SFA/LEA for financial statement purposes, or $5,000.00.

SECTION III – MICROPURCHASING

***Name and Title of those responsible for Micro-Purchase Procedures:**
Scott Hewitt – Principal
Carrie Ellis – Food Director
Brian Clennan – Culinary Art Teacher

If the amount of purchases for items is less than $10,000 *or less than the LEA's micro-purchase threshold*, the following procedure will be used.

Select one:

☒ Purchases below $10,000

☐ Purchases below $_____ *(LEA threshold if it is below $10,000, must use most restrictive)*

1. Purchase prices shall be reasonable.
2. Micro-purchases shall be spread equitably among qualified suppliers. If the SFA is unable to spread purchases equitably, it shall document the reason why (example: the next grocery store is located 50 miles away from the school LEA).

SECTION IV – SMALL PURCHASE PROCUREMENT

***Name and Title of those responsible for Small Purchase Procedures:**
Scott Hewitt – Principal
Carrie Ellis – Food Director
Brian Clennan – Culinary Art Teacher

If the amount of purchases for items less than $250,000 *or the SFA's small purchase threshold*, Small Purchase Procedures must be followed. Quotes documented from an adequate number of qualified sources will be required.

Select one:

☒ Purchases below $250,000

☐ Purchases below _____ *(LEA threshold if it is below $250,000, must use most restrictive)*

1. Written specifications will be prepared and given to a minimum of two vendors.
2. The person(s) stated in Section IV will be responsible for contacting potential vendors when price quotes are needed.
    a. Clear and accurate descriptions of the technical requirements provided for the product, or service being procured shall be provided.
    b. The SFA 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.
    c. Buy American requirements shall be included when applicable.
3. Quotes will be awarded by person(s) stated in Section IV. An award will be made to the responsive and responsible vendor whose quote is lowest in price.
4. The person(s) stated in Section IV 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.

5. The person(s) stated in Section IV will be responsible for documentation that the actual product specified is received at the documented price.
6. Any time an accepted item is not available, the person stated in Section IV 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.

***See Appendix B for a Small Purchase Checklist and Appendix C for an Informal Purchasing Log.**

SECTION V – FORMAL PROCUREMENT

***Name and Title of those responsible for Formal Procurement Procedures:**
Scott Hewitt – Principal
Carrie Ellis – Food Director
Brian Clennan – Culinary Art Teacher

Select one or more as applicable:
☒ Purchases over $250,000
☐ Purchases over $_____ (*LEA threshold if it is above $250,000, must use most restrictive*)

1. If the amount of purchases is above the LEA's threshold, or a Food Service Management Contract, formal procurement procedures will be used as required by 2 CFR Part 200.318-326.

    a. When a formal procurement method is required, the following ***COMPETITIVE SEALED BID or an Invitation for Bid (IFB) or COMPETITIVE PROPOSAL in the form of a Request for Proposal (RFP)*** procedures will apply: (It is highly suggested by USDA to allow 45 days for IFB & 60 days for RFP from the time the information is given to vendors until the time of bid opening. It should not be any less than 30 days)

    b. An announcement of an **Invitation for Bid (IFB) or a Request for Proposal (RFP)** will be placed in the Midland Daily News to publicize the intent to purchase needed items.

    The public advertisement will include:
    - A general description of items to be purchased.
    - The deadline for submission of questions and the date written responses will be provided including an addenda to bid specifications, terms and conditions as needed.
    - A date of pre-bid meeting, if applicable, and if attendance is a requirement for bid award.

- A deadline for submission of sealed bids or proposals, and address of location where complete specifications and bid forms may be obtained.

c. Any person who develops written specifications or descriptions for procurements will be ***prohibited*** from submitting bids or proposals for such products or services.

d. The IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the solicitation document:

- LEA information
- Description of the goods and services to be procured
- Contract period
- SFA/Sponsor 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 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.

***See appendix D for a Formal Procurement Checklist.**

e. **Invitation for Bid**

In 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.

f. **Request for Proposals**

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.

Evaluation Criteria the LEA can use to award an RFP.

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

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

g. Specifications and estimated quantities of products and services prepared by SFA/Sponsor and provided to potential contractors desiring to submit bids/proposals for the products or services requested.

h. If any potential vendor ask questions regarding the specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the person(s) stated in Section V and date specified

i. The person(s) stated in Section V will be responsible for securing all bids or proposals.

j. The person(s) stated in Section V will be responsible to ensure all SFA/Sponsor procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.

2. 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 effected and the basis for settlement.

The SFA 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:

a. at least thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and

b. an opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) 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
The Windover High School may terminate an award prior to the expiration of the term, without cause and without penalty, upon thirty (30) days written notice to the selected Vendor.

c. **Equal Employment Opportunity**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of **"federally assisted construction contract"** in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- ***Federally assisted construction contract*** means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the U.S. Government or borrowed on the credit of the U.S. Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the U.S. Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

- ***Construction work*** means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

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

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 or 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 LEA of Columbia; but

  (B) Not including an employee employed as a seaman.

f. **<u>Rights to Inventions Made Under a Contract or Agreement</u>**

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 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 in **excess of $250,000** shall contain provision that require compliance with all applicable standards, orders, or requirements issued under Section 306 of the *Clean Air Act* (42 U.S.C. 1857[h]), Section 508 of the *Clean Water Act* (33 U.S. C. 1368), Executive Order 11738, and *Environmental Protection Agency (EPA) Regulation* (40 CFR §15), which prohibit the use of nonexempt federal contracts, grants, or loans of facilities included on the EPA list of violating facilities. The provision shall require reporting of violations to the grantor agency and to the EPA Assistant Administrator for Enforcement (EN-329). The contract must recognize mandatory standards and policies relating to energy efficiency that are contained in the State Agency conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

h. **Debarment and Suspension Certification**

An SFA is prohibited from contracting with an individual or company that has been debarred or suspended in accordance with 2 CFR *§* 180, as adopted and modified by USDA regulations at 2 CFR §417. There are three methods that may be used to verify that vendors have not been debarred, suspended, or excluded or otherwise ineligible for participation in Federal programs:

1. Check https://www.sam.gov/portal/SAM/##11
2. Collect certification from vendor
3. Add clause/condition to transaction with vendor

The SFA 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; norm 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”.

***See Appendix E for sample debarment and suspension certification.**

i. **Lobbying Certification**

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

***See Appendix E for sample lobbying certification.**

SECTION VI - NON-COMPETITIVE NEGOTIATION

Name and Title of those responsible for Non-Competitive Negotiations:
Scott Hewitt – Principal
Carrie Ellis – Food Director
Brian Clennan – Culinary Art Teacher

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, the SFA must obtain MDE approval, and then go directly to the one source to negotiate terms, conditions, and prices.

If the SFA receives an inadequate number of responses to its solicitation and it is determined the procurement resulted in a lack of competition, the SFA must 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 NEGOTIATION** procedures will be used:

1. Written Specifications will be prepared and provided to the vendor.

2. The person(s) stated in Section VI will be responsible for the documentation of records to fully explain the decision to use the non-competitive negotiation. The records will be available for audit and review.

3. The person(s) stated in Section VI will be responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive negotiation are met.

4. Non-competitive negotiations shall be used for one-time purchases of a new food item in order to determine food acceptance by students and for samples for testing purposes. A record of non-competitive negotiation purchase shall be maintained by the Windover High School. The record of non-competitive purchases shall include, at a minimum, the following:
    - item name
    - dollar amount
    - vendor
    - reason for non-competitive procurement

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 SFA. The following emergency procedures shall be followed. All emergency procurements shall be approved by Scott Hewitt, Principal. 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 (3) years (or until a procurement audit has been completed) after final payment. Specifically the SFA/Sponsor 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

SECTION VIII – RESOURCES AND APPENDICIES

Additional Resources:

List of included appendices:

Appendix A- Buy American Exception Worksheet
Appendix B- Small Purchase Checklist
Appendix C- Informal Purchasing Log
Appendix D- Formal Procurement Checklist
Appendix E- Debarment & Suspension/ Anti-Lobbying Certification

Buy American Provision:

Section 104 (d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public La 105-336) added a provision, section 12(n) to the NSLA (42 USC 170 (n)), requiring school food authorities to purchase, to the maximum extent practicable, domestic commodity or product. Domestic commodity or product is defined 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.

Limited Exceptions:

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. Exceptions include:

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

Limited exceptions to the Buy American Provision allow for the purchase of products not meeting the "domestic" standard. Before utilizing an exception, alternatives must be considered:

1. Are there other domestic sources for this product?

2. Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive?
3. Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and/or availability change?

To be considered for the alternative or exception, the request must be submitted in writing to a designated official, in advance of delivery. The request must include the:

1. Alternative substitute (s) that are domestic and meet the required specifications:
    a. Price of the domestic food alternative substitute (s); and
    b. Availability of the domestic alternative substitute (s) in relation to the quantity ordered.
2. 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.

Buy American Documentation Worksheet:

If using one of the above exceptions, documentation must be kept on file justifying the exceptions. Utilize this worksheet to document compliance with the Buy American Provision.

Food Component	Item/ Item Description	Country of Origin	Justification (justification for non-domestic product)

☐ **Forecast product needs**

Cycle menus, velocity reports, and production records are common tools used to forecast product needs. If the estimated value of goods or services needed (during the time period you wish to purchase them in) is greater than the micro-purchase threshold, and less than the small purchase threshold, the SFA should use the small purchase method of competitive quotations.

*The Federal micro-purchase method is $10,000 and the Federal small purchase threshold is $250,000.

☐ **Seek to obtain price quotations from an adequate number of qualified sources**

At least two sources should be used to obtain price or rate quotations. Quotes may be obtained verbally or through writing (example: email), but must be documented. An informal purchase log is available on MDE's website at: https://www.michigan.gov/mde/services/food/procurement-and-contracts/resources

☐ **Give clear and accurate specifications**

Clear and accurate descriptions of the technical requirements must be provided for the product or service being procured. Specifications can be given verbally or in writing. In addition, if the SFA specifies a brand name product, it must allow an equal product to be offered.

☐ **Not restrict competition**

An SFA may not restrict competition by placing unreasonable requirements on vendors to qualify for business, requiring unnecessary experience or excessive bonding, or any other means of restricting competition.

☐ **Include Buy American Requirements when applicable**

SFAs are required by the Buy American Provision to purchase, to the maximum extent practicable, domestic commodities or products. An SFA must require that vendors understand and can meet these requirements. This can be done during the quotation process, by communicating the requirements to vendors verbally or in writing. An SFA may also obtain a certification statement from the vendor if it chooses to do so.

☐ **Select the correct vendor**

After quotes are obtained, the SFA must select the correct vendor based on the products or services requested and the vendor responses provided. If an SFA chooses to reject an offer, it should document why. For example, the vendor cannot deliver on the days or times that the SFA needs. If more than one vendor is able to provide all of the requested services and products, the award should be made to the lowest price offer.

☐ **Maintain records sufficient to detail the history of procurement**

Although quotations may be written or verbal, the SFA must document the quotations. A written agreement is not required, but may be helpful to document all the terms and conditions of the agreement.

☐ **Keep records**

All procurement records must be kept for three years plus the current year. Invoices/receipts should show that the goods or services were purchased at the price that was quoted.

INFORMAL PURCHASING LOG

Vendor Name:										
<u>Items to be Purchased:</u> • Product specifications • Delivery Frequency • Packaging	Quantity Expected to Buy	Unit Price	Extended Price (Quantity x Unit Price)	*VS (✓)	Unit Price	Extended Price (Quantity x Unit Price)	*VS (✓)	Unit Price	Extended Price (Quantity x Unit Price)	*VS (✓)
1.										
2.										
3.										
4.										
5.										
6.										
7.										
TOTAL			$			$			$	
*Vendor Selected (VS)		☐			☐			☐		
Date & Method of contact:										
Name of person quoting pricing:										
Duration quoted pricing is good for:										
Additional Notes:										
Signature of person completing this form:								Date:		

*Vendor Selected (VS); you can award all items to one bidder (lowest total price) or you can award bid on a line item basis (lowest item price)

☐ Forecast product needs

Cycle menus, velocity reports, and production records are common tools used to forecast product needs

Conduct a cost or price analysis

Estimate the total dollar value of the contract, which includes product or service purchases for the duration of the contract

- SFA may use forecasted product needs and current or past product pricing to complete the cost analysis

Write product specifications

Product specifications should include the product name, description, case pack and weight, minimum and maximum sizes and pieces, main ingredients, prohibited ingredients, nutritional standards or CN requirements, quality indicators, run and code numbers, etc.

- Note: specifications may include a brand name, but must include 'or equal'. A bidder should have the opportunity to propose an equal product
- An SFA may pre-screen products and provide bidders with a list of preapproved equal products. The SFA must ensure maximum free and open competition during the procurement process, and pre-screening procedures should be included in the SFAs written procurement procedures.

Create a solicitation document

There are two types of formal solicitations: Invitation for Bid (IFB) and Request for Proposals (RFP)

- I**nvitation for Bid (sealed bid)**
  - Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid:
    - conforms with all the material terms and conditions of the invitation for bids, and
    - Is the lowest price
- **Request for Proposals (competitive proposal)**
  - The contract is awarded to the responsible and responsive vendor whose proposal scored the highest number of points, and is most advantageous to the program with price and other factors considered

A well-written solicitation gives a bidder clear information on what the SFA is planning to purchase and how. A solicitation should include:

- Background information on the LEA
  - Size, number of meals served, etc.
- General descriptions of the goods and/or services to be purchased
  - Solicitation should indicate if distribution services are requested
  - Include distribution for processed USDA foods, if applicable
- Information about pre-proposal meeting to be held (if applicable)
- Date and time for solicitation submission
  - Time and location of public opening if IFB
- Time period of the contract and options for renewals
  - Generally 1 year with 4 optional renewals
- Type of contract to be awarded
  - An IFB must result in a fixed fee or firm fixed price contract.
  - An RFP may result in a fixed fee or cost reimbursable contract. Cost plus percentage is not allowable.

        - Fixed fee may be tied to a price index or price escalator/de-escalator clause
        - Cost reimbursable contracts must not include unallowable costs. The vendor must return all rebates, discounts, and credits to the SFA. A cost plus fixed fee contract may also be used.
    - Protest procedures
    - Proposal withdrawal procedures
    - List of all products to be purchased and specifications
    - Options for 'piggybacking', adding goods or services, or increasing contract volume over time
        - Changes to the contract may not result in a material change- no more than a 10% change in contract value is recommended
    - Criteria for award
        - IFB- award will be made to the lowest bidder
        - RFP- include all criteria that will be used to evaluate proposals
            - Cost must be the highest weighted factor but does not have to be 51%
            - A scoring rubric is required that identifies all evaluation factors and their relative importance
        - If using geographic preference, indicate how preference will be given
    - Method for evaluating cost
        - How will cost be evaluated for the products or services requested? Common ways to evaluate cost are:
            - By line item: each line is awarded separately based on individual product cost
            - By product groupings: the total cost of groups of products are evaluated and awarded as a group. Example: frozen, produce, canned goods.
            - Bottom line (all-or-nothing): the total cost of the goods or services is evaluated; all products/services are awarded together.
            - Market basket cost analysis: representative sample of products, called a 'market basket' is used to estimate the total cost. The sample should consist of products that represent at least 75% of the total value of the contract (high-velocity items). The SFA must obtain a price for all products not included in the market basket prior to the award of the contract.
    - Technical requirements of the vendor
        - Responsibilities of the vendor: delivery days, delivery windows, HACCP plan, staff requirements, etc.
        - Procedures for recalls or substitutions
        - Buy American Provision Requirements
        - Common legalities
        - Required forms and certifications: suspension and debarment, lobbying activities, anti-collusion, etc.
    - Contract provisions required by 2 CFR 200 appendix II (as applicable):
        - Termination for cause and convenience- contracts in excess of $10,000
        - Equal Opportunity Employment- 'federally assisted construction contracts'
        - Davis-Bacon Act- construction contracts in excess of $2,000
        - Contract Work Hours and Safety Standards- contracts in excess of $100,000 that involve the employment of mechanics or laborers
        - Right to inventions made under a contract or agreement- if the contract meets the definition of a 'funding agreement' under 37 CFR 401.2 (a)
        - Clean Air Act- contracts in excess of $150,000
        - Debarment and Suspension- all federally awarded contracts
        - Byrd Anti-Lobbying Amendment- contracts in excess of $100,000
    - Required provisions for cost reimbursable contracts:

- Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority.
- The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or that the contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification.
- The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit.
- The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.
- The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

Publicize the solicitation

Formal solicitations must be publically advertised and seek/invite two or more qualified sources willing and able to compete.

Allow sufficient time for vendors to respond

Response time may vary depending on the complexity of the solicitation. A minimum of two weeks for IFBs and 30-35 days for RFPs is recommended.

Accept bids or proposals from responsive and responsible vendors

An SFA must determine if the vendor is responsive and responsible before accepting their bid or proposal

- Responsive: Did the vendor respond to the IFB or RFP on time and include all required attachments, certifications, etc.?
- Responsible: Does the vendor meet the criteria outlined in the solicitation? Do they have a good track record with providing products and services to similar institutions?

Evaluate the bids or proposals

- IFB:
  - Bids are publically opened at the location, date, and time prescribed in the IFB
  - Any or all bids may be rejected if there is a sound, documented reason
  - Cost is evaluated as outlined in the IFB, which includes all costs such as transportation and delivery costs
- RFP:
  - Proposals cannot be opened until after the closing date and time specified in the RFP
  - An evaluation committee should score the proposals *only* on the criteria outlined in the RFP

- An SFA may conduct negotiations of the top-ranked proposals to ensure that each vendor fully meets the needs of the RFP. This must be done before cost proposals are opened. The SFA may also allow vendors to amend their cost proposal to reflect any changes made during the proposal negotiation. All negotiations must be done fairly and may not give a competitive advantage to one vendor.

Award the contract

Formal procurement should always result in a (signed) written contract between the two parties. The contract should include:

- Identification of the parties involved in the contract
- Contract duration
- Scope of work
- A complete list of products, including specifications (and price)
- Type of contract (fixed price or cost reimbursable)
  - Fees must be identified and agreed upon
- Contract renewal options, including provisions for changes such as the addition of goods or services
- Contract modification and change procedures
- Default and breach of contract provisions, remedies, cancellation procedures, and penalties
- Required compliance certifications
- Contract termination rights for cause and convenience
- Recordkeeping requirements
- Laws that govern the contract
- Cost reimbursable contracts: requirements that all costs be net of discounts, rebates, and other applicable credits
- Sanitation and licensing requirements
- Professional certification requirements

Manage the contract

SFAs are responsible for ensuring that vendors are compliant with all terms of the contract. Contract management is ongoing for the duration of the contract.

Maintain records

The SFA must maintain records sufficient to detail the history of procurement. All records must be kept for a period of 3 years after the submission of the final claim for reimbursement for the fiscal year or longer if an audit has not been resolved.

Renew the contract as applicable

If the contract allowed for renewal options, both parties may agree to renew the contract for additional terms as applicable.

Add products to the contract

New products may be added to the contract as long as the cost of the new products does not create a material change (no more than 10% of the contract value is recommended). Substitutions for unavailable products are not considered new products.

- The SFA should evaluate the estimated cost of new product(s) for the duration of the contract period and determine if the cost would be considered a material change against the total estimated contract value. No more than a 10% change is recommended.

- If the cost to add new products would not constitute a material change, the SFA may add new products to the contract. During the contract renewal, the SFA must amend the contract to include additional items.
- A new contract value is determined annually (or at the end of the contract term), and the new contract value may be used to estimate material changes moving forward
- If the cost to add new products would constitute a material change, the SFA may procure new products using another approved procurement method (micro-purchase, small purchase, formal purchase)

DEBARMENT AND SUSPENSION FORM

Debarment and Suspension and Other Responsibility Matters Primary Covered Transactions
School Food Authorities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

    a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

    b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

    c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

    d. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name _____Date_____
Name and Title of Authorized Representative _____
Signature of Authorized Representative_____Date _____

CERTIFICATION REGARDING LOBBYING

Certification Regarding Lobbying: Applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts Exceeding $100,000 in Federal funds. Contractors that apply or bid for such an award must file the required certification.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee of [School] Independent School District in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee of [School] Independent School District in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding $100,000 in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.
Name/Address of Food Service Management Company/Vendor_____
Name/Title of Submitting Official _____Signature_____Date_____