

## **Procurement:**

### ***Child Nutrition Program Procurement***

#### **Compliance with Federal Requirements—**

Because the District's Child Nutrition Program expends funds received from federal grants, procurement for that program must satisfy the standards in 2 CFR Part 200. In order to meet those standards, procurements for the District's Child Nutrition Program should follow the District's general procurement policies with the modifications and additional requirements set forth in this policy.

*Utah Admin. Rules R277-113-10(1)(t) (November 8, 2021)*

[Utah Code § 63G-6a-107.2\(2\)\(b\) \(2020\)](#)

[2 CFR § 200.317](#)

[2 CFR § 200.318\(a\)](#)

#### **Efficiency—**

The District shall conduct procurements so as to avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Consideration should also be given to cooperative procurements as provided for under Policy CBH.

[2 CFR § 200.318\(d\), \(e\)](#)

#### **Permissible Methods of Procurement—**

The District may procure using sealed bids as provided for in Policy CBB, requests for proposals as provided for in Policy CBD, and small purchases as provided for in Policy CBE. When procuring through sealed bids, bids must be solicited from an adequate number of qualified sources and the sources must be provided with sufficient time to respond before the opening date. The bids must be opened publicly and at the time and place specified in the solicitation. Any and all bids may be rejected if there is a sound reason for doing so which is documented. When procuring using requests for proposals, proposals must be solicited from an adequate number of qualified offerors and any response to the publicized request must be considered to the maximum extent practical.

If the requirements for sole source procurement or emergency procurement set out in Policy CBF are met, those non-competitive method of procurement may be used. No other non-competitive methods of procurement may be used.

[2 CFR § 200.320\(a\), \(b\)](#)

#### **Bid Security—**

In conducting procurements for contracts supported by Child Nutrition Program funds, the District shall require a bid guarantee in the amount of 5% of the bid price, a performance bond for 100% of the contract price, and a payment bond

for 100% of the contract price. The form and nature of the security required shall be consistent with the security requirements set out in Policy CBA.

[2 CFR § 200.326](#)

## **Cost Analysis—**

For any Child Nutrition Program procurement action (including contract modification) which is anticipated to exceed \$250,000, the District must provide a cost or price analysis. The specific method and degree of analysis depends on the particular circumstances, but at a minimum the District will make independent estimates regarding cost or price before receiving bids or proposals.

[2 CFR § 200.324\(a\)](#)

## **Contract Terms—**

For any procurement which is made without price competition, and for any procurement which requires a cost analysis (as provided above), the District must negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Costs or prices based on estimated costs for contracts using Child Nutrition Program funds are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the District under 2 CFR Part 200, Subpart E. The District may reference its own cost principles that comply with the Federal cost principles.

[2 CFR § 200.324\(b\), \(c\)](#)

Notwithstanding Policy CBG, a contract supported by Child Nutrition Program funds may not use the cost plus percentage of cost method of contracting under any circumstances.

[2 CFR § 200.324\(d\)](#)

Contracts supported by Child Nutrition Program funds must include the applicable contract provisions required in [Appendix II to 2 CFR Part 200](#).

[2 CFR § 200.327](#)

## **Non-Responsible Contractors—**

As provided for under Policy CBA, the District shall not enter into contracts with vendors who are determined to be not responsible. The District shall consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. In addition, the District must comply with the restrictions on awards to parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities as provided for in 2 CFR Part 180.

[2 CFR § 200.318\(h\)](#)

[2 CFR § 200.214](#)

**Prequalifying Vendors—**

Procurements may be made using the processes set out in Policy CBDA and Policy CBDB, but in using those processes the District must ensure that lists are current and include enough qualified sources to ensure maximum open and free competition. In addition, vendors must be permitted to qualify during the solicitation period.

[2 CFR § 200.319\(e\)](#)

**Preferences—**

The preferences for Utah products and Utah contractors set out in Policy CBA cannot be applied to procurements using Child Nutrition Program funds. However, procurements using such funds must give preference to goods, products, or materials produced in the United States over those produced in other countries.

[2 CFR § 200.319\(c\)](#)

[2 CFR § 200.322](#)

**Small/Minority Businesses, Women's Business Enterprises, Labor Surplus Area Firms—**

In conducting Child Nutrition Program procurement, the District must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Such affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. 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;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. 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
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

[2 CFR § 200.321](#)

**Procurement of Recovered Materials—**

Where the purchase price is greater than \$10,000 and it is consistent with maintaining a satisfactory level of competition, the District in conducting Child Nutrition Program procurements must procure only items designated in the EPA guidelines in 40 CFR Part 247 that contain the highest percentage of recovered materials practicable.

[2 CFR § 200.323](#)

**Records—**

The District shall retain all books, records and other documents relative to the award of the contract for six (6) years after final payment. Specifically, the District shall maintain, at a minimum, the following documents:

1. The written rationale for the method of procurement;
2. A copy of the original solicitation;
3. The selection of contract type;
4. The bidding and negotiation history and working papers;
5. The basis for contractor selection;
6. Approval from the State agency to support a lack of competition when competitive bids or offers are not obtained;
7. The basis for award cost or price;
8. The terms and conditions of the contract;
9. Any changes to the contract and negotiation history;
10. Billing and payment records;
11. A history of any contractor claims; and
12. A history of any contractor breaches.

[2 CFR § 200.318\(i\)](#)

**Standards of Conduct—**

In addition to the standards of conduct set forth in Policy CCD, the following applies to procurements supported by Child Nutrition Program funds. No employee, officer or agent of the District shall participate in the selection or in the award or administration of a contract supported by Child Nutrition Program funds if a conflict

of interest, real or apparent, would be involved. Conflicts of interest exist when one of the following has a financial or other interest in the firm selected for the award:

1. The employee, officer or agent;
2. Any member of the immediate family;
3. His or her partner;
4. An organization which employs or is about to employ one of the above.

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.

Employees who violate this standard of conduct shall be reprimanded or dismissed, as determined to be appropriate, together with any other appropriate legal actions.

[2 CFR § 200.318\(c\)\(1\)](#)