

# O'DONNELL ISD

## PROCUREMENT PLAN CHILD NUTRITION PROGRAM

This procurement plan contained on the following pages 1 through 12 will be implemented on September 1, 2023 from that date forward until amended. All procurements must adhere to free and open competition. Source documentation must be available to determine open competition, the reasonableness, the allowability and the allocation of costs.

  
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President, Board of Education

08/29/23  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Superintendent

08/29/23  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Business Manager

08/29/23  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Food Service Director

08/29/23  
\_\_\_\_\_  
Date

# O'Donnell ISD

## Procurement Plan

The O'Donnell ISD will purchase food and other items for use in the Child Nutrition Program in compliance with Federal Regulations in Super-Circular 2 CFR 200, state and local law, using procurement procedures outlined on this and attached pages.

The primary purpose of this procurement plan is to ensure that open and free competition exists to the maximum extent possible. The procurement process practiced by O'Donnell ISD must not restrict or eliminate competition. For example, description of goods, products, and/or services to be procured should not contain features that unduly restrict competition. Competition helps assure that goods, products, and/or services will be obtained that best meets the needs of O'Donnell ISD.

### A. Procurement Management – O'Donnell ISD and Governing Body

The Business Manager is primarily responsible for overseeing all procurement for O'Donnell ISD's food service department including any procurement conducted on behalf of O'Donnell ISD. This responsibility includes, but is not limited to, the responsibilities set forth below:

- Ensures that all SFA procurement transactions are conducted in a manner that provides full and open competition in accordance with federal law.
- Managing contracts and overseeing vendors and/or ensuring that vendors perform in accordance with the terms, conditions, and specifications of vendor contracts and/or purchase orders.
- Ensuring all Child Nutrition purchases will be conducted following the Buy American Provision.
- Verifying that all invoices are accurate and that there are no duplicative services or products on invoices.

- Determining which procurement method to follow by using a cost/price analysis for all purchases.
- Ensuring that TDA is contacted to obtain a Capital Expenditure Request for any equipment that is \$5000 or more.
- Ensuring that vendors who develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are **excluded** from competing for such contracts and/or purchase orders.
- Ensuring that all contractual and administrative issues arising out of procurements for the SFA's food service department are handled in accordance with good administrative practice and sound business judgment.
- Ensuring all necessary affirmative steps are taken to assure that small, minority and women businesses, enterprises and labor surplus firms are used when possible. (2 CFR Part 200.321) Ensure the bids or proposals have a place for the vendor/contractor to check to show they are in this category.
- Ensuring that sufficient records detailing the SFA's procurement history as well as the procurement history of all other entities procuring on behalf of the SFA are maintained.

The records maintained for contracts include, at a minimum, the following records:

- Rationale for methods of procurement
- Selection of procurement type
- Selection or rejection of vendor
- Basis for contract price

These records are maintained for at least 5 years after submission of the Final Claim for Reimbursement for the fiscal year or longer if otherwise required by law.

- Ensures that the LEA maintains policies and/or procedures that govern the conduct of employees who are engaged in the selection, award, and administration of contracts for the SFA. These policies and procedures meet the minimum requirements set forth in federal law.

## B. O'Donnell ISD Procurement

### Procurement Methods

#### 1. MICRO-PURCHASE

O'Donnell ISD acquires supplies or services that do not exceed the current Micro-Purchase Threshold of \$10,000.00.

The Food Service Director or the Business Manager is responsible for procuring goods and/or services for O'Donnell ISD food service department using micro-purchase process.

Purchases within the micro-purchase threshold must be practicable and distributed equitably among qualified suppliers if there is more than one supplier in the area. Price comparisons are not required, but the price should be considered reasonable.

Documentation must be kept for all purchases.

## 2. INFORMAL/SMALL PURCHASE

O'Donnell ISD acquires supplies or services that do not exceed the Simplified Acquisition Threshold of \$10,000.00. Purchases over \$10,000.00 but less than \$50,000.00 require Board approval.

The Superintendent is responsible for making purchases using the Small Purchase Procedure. Responsibilities include, but are not limited to the following:

- In developing your written specifications, the same information needs to be provided to all vendors/contractors. You may use prices found online, in catalogs, sale flyers, newspapers, prices obtained from grocery stores, farmer's markets, and other potential suppliers.
- Contacting potential vendors when price quotes are needed from at least 3 qualified sources. Documentation will be needed if 3 sources are not available. Price quotes can be verbal or written; documentation of the responses is required.
- Ensuring the confidentiality of price quotes are maintained until purchase is made.
- Ensuring documentation is maintained and includes at least the written specifications used, identification of vendors contacted, vendor price quotes received, and vendor selected.

## 3. FORMAL - IFB or RFP

Procurement for services, supplies, or other property exceeding the SFA's Simplified Acquisition Threshold of \$50,000.00 are conducted by formal procurement.

The Superintendent is responsible for procuring goods and/or services for the SFA using formal procurement. The Superintendent will perform a cost analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including modifications. (2 CFR Part 200.323(a)). They will ensure that the bid tabulation or the evaluation criterion score sheet is signed signifying a review and approval of the selections. Procurement must follow the IFB or RFP rules and regulations.

- An announcement of an IFB or an RFP will be placed to publicize the intent of O'Donnell ISD to purchase needed items. The advertisement of bid/proposals or legal will run for a specified length of time.
- The Superintendent will be responsible for making the determination about material changes and acting if needed.
- An advertisement is required for all purchases over \$50,000.00. The announcement (advertisement or legal notice) will contain a general description of items to be purchased, the deadline for submission of sealed IFB's and RFP's and the address where complete specifications and other procurement documents may be obtained.
- In an IFB or RFP, each vendor/contractor will be given an opportunity to bid on the same specifications.
- The developer of written specifications or descriptions for procurements will be prohibited from submitting bids or proposals for such products or services.
- The IFB or RFP will clearly define the purchase conditions. The following, shall be addressed in the procurement document:
  1. Contract time period
  2. Sponsor is responsible for all contracts awarded (statement)
  3. Date, time, and location of bid opening
  4. How vendor/contractor is to be informed of bid acceptance or rejection
  5. Delivery schedule
  6. Set forth requirements (terms and conditions) which bidder must fulfill in order for bid to be evaluated
  7. Benefits to which the Child Nutrition Program Sponsor will be entitled if the contractor cannot or will not perform as required
  8. Statement assuring positive efforts will be made to involve minority, small, and women business

9. Statement regarding the return of purchase incentives, discounts, rebates, and credits to the Sponsor's non-profit Child Nutrition account
10. Contract and/or purchase orders may be issued for firm fixed prices after formal bidding process.
11. Price adjustment clause based on appropriate standard or cost index
12. Method of evaluation and type of contract to be awarded
13. Method of award announcement and effective date (if intent to award is required by State or local procurement requirements)
14. Specific bid protest procedures including contact information of person and address and the date by which a written protest must be received
15. Provision requiring access by duly authorized representatives of the School Food Authority, State Agency, United States Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts
16. Method of shipment or delivery upon contract award

**17. Program Regulations**

The CONTRACTOR shall be in conformance with the applicable portions of the SFA's agreement under the program. The CONTRACTOR will conduct program operations in accordance with 7CFR Parts 210, 215, 220, 225, and 250.

The CONTRACTOR shall provide products that meet the Public Law 111-296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). The CONTRACTOR's products shall meet grade level caloric, sodium, saturated fat, and trans fat requirements.

**18. Affordable Care Act**

The CONTRACTOR understands and agrees that it shall be solely responsible for compliance with the patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). The CONTRACTOR shall bear sole responsibility for providing health care benefits for its employees who provide services to the SFA as required by State or Federal law.

**19. Buy American Provision**

The Contractor will purchase, to the maximum extent practicable, domestic commodities or products in accordance with 7CFR 220.16(d). The CONTRACTOR shall purchase, to the maximum extent practicable,

domestic agricultural commodities or products substantially processed in the United States. "Substantially" means the final processed product contains over 51% domestically grown agricultural commodities. This provision applies to all food purchases paid from the nonprofit school food services account. There are limited exceptions to this provision which allow for the purchase of products not meeting the "domestic" standard as described above ("non-domestic") in circumstances when use of domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food products should be considered.

**20. Disclosure of Lobbying Activities**

Pursuant to Byrd Anti-Lobbying Amendment 31 USC 1352, the CONTRACTOR must disclose lobbying activities in connection with school nutrition programs. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. 7CFR 3018.100 (Only applies to contracts over \$100,000.00)

**21. Certification Regarding Lobbying**

Pursuant to 31 USC 1352, the Contractor must submit a certification regarding lobbying which conforms in substance with the language provided in CFR Part 200.450. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative Agreement to pay 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, or an employee of a Member of Congress in connection with any of the following covered Federal actions. (Only applies to contracts over \$100,000.00)

**22. Certificate of Independent Price Determination**

The Vendor admits that all prices in this Offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor certification regarding non-collusion.

**23. Civil Rights Compliance**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based

on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter 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; (2) fax: (202) 690-7442; or (3) email: [Program.intake@usda.gov](mailto:Program.intake@usda.gov).

**24. Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulation**

The CONTRACTOR will comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations which prohibit the use, under nonexempt federal contracts, grants or loans to facilities included on the EPA List of Violating Facilities. The SFA will report all violations to ADE and to the USEPA Assistant Administrator for Enforcement. (Only applies to contracts over \$100,000.00)

**25. Contract Work Hours and Safety Standard Act**

The CONTRACTOR shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Only applies to contracts over \$2,500)

**26. Debarment, Suspension, Ineligibility and Voluntary Exclusion**



By signing the Offer & Award form, the CONTRACTOR shall certify that they have not been debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under executive order 12549 and 12689. The CONTRACTOR shall comply with regulations implementing Office of Management and Budget Guidance in Non-procurement Debarment and Suspension codified at 2 CFR Part 180 and 2 CFR Part 417. These regulations restrict transactions with certain parties that are debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs or activities. (Only applies to contracts over \$25,000)

**27. Energy Policy and Conservation Act**

The CONTRACTOR shall meet the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act. (Pub. L. 94-163, 89 Stat. 871.)

**28. Equal Employment Opportunity**

The CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapters 60).

**29. Record Keeping**

The books and records of the CONTRACTOR pertaining to operations under this agreement shall be available to the SFA at any reasonable time. These records are subject to inspection or audit by representatives of the SFA, State Agency, the US Department of Agriculture, and the US General Accounting Office at any reasonable time and place.

**30. Invoicing**

The CONTRACTOR fully discloses all discounts, rebates, allowances, and incentives received by the CONTRACTOR from its suppliers. If the CONTRACTOR receives a discount, rebate, allowance, or incentive from any supplier, the CONTRACTOR must disclose and return to the SFA the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the SFA. 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. 7CFR 210.21 (f)(1)(iv).

No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost-reimbursable contract that fails to include the requirements of 7CFR 210.21, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the CONTRACTOR'S actual, net allowable costs. 7CFR 210.21 (f)(2)

**31. Termination Clause**

The contract may be terminated for cause and for convenience by the SFA. Appendix II to 2 CFR Part 200. (Only applies to contracts over \$10,000)

**32. E-Verify Requirement**

The CONTRACTOR warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S 23-214, Subsection A (That subsection reads: After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)

33. Description of process for enabling vendors to receive or pick up orders upon contract award.

34. The CONTRACTOR shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the CONTRACTOR.

35. Signed statement of non-collusion.

36. **For building projects:**

**Copeland "Anti-Kickback" Act**

**Davis-Bacon Act**

37. **Optional:**

**Applying a Geographical Preference. 7 CFR Part 210.21(g)**

Rules and Regulation will be followed described in USDA's Final Rule of Geographic Preference

- Specifications will be prepared and provided to potential vendors/contractors desiring to submit IFB or RFP for the products or services requested.

Vendors/contractors will be selected using the Sponsor's procedures such as:

1. **Does the vendor's product meet the required specifications?**
2. **Does the vendor's delivery schedule meet the Sponsor's needs?**
3. **Other criteria that each Sponsor determines are of value to them.**

- If any potential vendor is in doubt as to the true meaning of specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the Superintendent.
- The Superintendent will be responsible for securing all bids or proposals.
- The Superintendent will be responsible to ensure all SFA procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.
- In awarding a competitive negotiation (RFP), a description of award criterion 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. Following evaluation and negotiations a firm fixed price or cost reimbursable contract is awarded.
- The contracts will be awarded to the lowest price responsible bidder/proposer whose bid or proposal is responsive to the invitation and is most advantageous to the Sponsor, price, and other factors considered with price as the primary factor. Any and all bids or proposals may be rejected in accordance with law.
- The Superintendent is required to sign on the bid tabulation of competitive sealed bids or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.
- The Superintendent or Business Manager will review the procurement system to ensure compliance with applicable laws.
- The Superintendent, Business Manager or Food Service Director will be responsible for documentation the actual product specified is received.
- Any time an accepted item is not available, the Superintendent, Business Manager or Food Service Director will select the acceptable alternate. The Contractor must inform the Superintendent, Business Manager or Food Service Director asap when a product is not available. In the event a non-domestic agricultural product is to be provided to O'Donnell ISD, the contractor must obtain, in advance, the written approval of the product. The Superintendent, Business Manager or Food Service Director must comply with the Buy American Provision.
- Full documentation as to the reason an accepted item was unavailable, and to the procedure used in determining acceptable alternates, will be available for audit and review. The person responsible for this documentation is the Superintendent, Business Manager or Food Service Director depending on the item.

- The Superintendent, Business Manager or Food Service Director will be responsible for maintaining all procurement documentation depending on the contract.

#### 4. NON-COMPETITIVE PROCUREMENT

The district will seek approval from the Texas Department of Agriculture prior to non-competitive procurement purchases. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- 1) The item is available only from a single source.
- 2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

After solicitation of a number of sources, competition is determined inadequate. Food Service Director, Business Manager, or Superintendent may be responsible for handling non-competitive negotiation, depending on the circumstance.

Responsibilities include, but are not limited to the following:

- Ensuring that a record of non-competitive negotiation is maintained including, at a minimum, the following:
  - Item Name,
  - Dollar amount,
  - Vendor,
  - Reason for non-competitive procurement
- Ensuring documentation that the actual product or service specified was received

The Food Service Director, Business Manager or the Superintendent will monitor the contract, invoices, product quality, product quantity, prices, terms and conditions for compliance depending on the purchase.

O'Donnell ISD will award the contract to the most responsive (able to meet the requirements of the solicitation) and responsible (able and willing to furnish the goods or services solicited) vendor with the lowest price.

O'Donnell ISD shall agree to retain all books, records and other documents relative to the award of the contract for five (5) years after final payment.

## 5. 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 O'Donnell ISD. The following emergency procedures shall be followed. Prior approval will be obtained from TDA. All emergency procurements shall be approved by the Superintendent. At a minimum, the following emergency procurement procedures shall be documented:
  - Item Name
  - Dollar amount
  - Vendor, and
  - Reason for emergency
2. All books, records and other documents relative to the award of the contract must be retained for five (5) years after final payment. Specifically, O'Donnell ISD shall maintain, at a minimum, the following documents
  - Written rationale for the method of procurement;
  - A copy of the original solicitation;
  - The selection of contract type;
  - 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 basis for award cost or price;
  - 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; and
  - A history of any contractor breaches.

