

DAF-4 – PROCUREMENT-ADDITIONAL PROVISIONS PERTINENT TO FOOD SERVICE PROGRAM

The following provisions shall be included in all cost reimbursable contracts for food services purchases, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts: (7 CFR Sec. 210.21, 215.14a, 220.16)

- A. **Mandatory Contract Clauses:** The following provisions shall be included in all cost reimbursable contracts for food services purchases, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:
1. 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;
 2. 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
 3. 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;
 4. The contractor's determination of its allowable costs must be made in compliance with the applicable departmental and program regulations and Office of Management and Budget cost circulars;
 5. 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. If approved by the state agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;
 6. 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; and
 7. 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.
- B. **Contracts with Food Service Management Companies:** Procedures for selecting and contracting with a food service management company shall comply with guidance provided by the NHDOE, including standard forms, procedures and timelines for solicitation, selection and approval of proposals and contracts.

C. "Buy American" Requirement:

Under the "Buy American" provision of the National School Lunch Act (the "NSLA"), school food authorities (SFAs) are required to purchase, to the maximum extent practicable, *domestic commodity or product*. As an SFA, the District is required to comply with the "Buy American" procurement standards set forth in 7 CFR Part 210.21(d) when purchasing commercial food products served in the school meals programs. This requirement applies whether the District is purchasing the products directly or when the products are purchased by third parties on the District's behalf (e.g., food service management companies, group purchasing cooperatives, shared purchasing, etc.).

Under the NSLA, "*domestic commodity or product*" is defined as an agricultural commodity or product that is produced or processed in the United States using "*substantial*" agricultural commodities that are produced in the United States. For purposes of the act, "*substantial*" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowable under this provision as territories of the United States.

1. Exceptions: The two main exceptions to the Buy American requirements are:
 - a) The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
 - b) Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.
2. Steps to Comply with Buy American Requirements: In order to help assure that the District remains in compliance with the Buy American requirement, the Food Service Director, shall
 - a) Include a Buy American clause in all procurement documents (product specifications, bid solicitations, requests for proposals, purchase orders, etc.);
 - b) Monitor contractor performance;
 - c) Require suppliers to certify the origin of the product;
 - d) Examine product packaging for identification of the country of origin; and
 - e) Require suppliers to provide specific information about the percentage of U.S. content in food products from time to time.

First Reading: October 26, 2021

Second Reading: November 9, 2021

Final Adoption: November 23, 2021