

Magnolia Elementary School District – Procurement Procedures

Effective July 1, 2018

The Magnolia School District Food Services Department will purchase food and other items for use in the School Nutrition Programs (SNP) in compliance with 2 CFR Part 200, State and District regulations, using the procedures outlined as follows and in the attached chart of procedures.

The primary purpose of these procurement procedures is to ensure that free and open competition exists to the maximum extent possible. The Magnolia School District, herein referred to as MSD, believes that competition helps ensure that goods, equipment, and services will be obtained from the most responsible and responsive bidders. The procurement procedures practiced by the MSD describe the procedures used to procure goods, equipment, or services for the MSD SNP programs. These procedures will not unduly restrict or eliminate competition.

Competitive Sealed Bids [Invitation for Bid (IFB) or Request for Proposal (RFP)]

The sealed bid method is the preferred method for procuring equipment & food contracts and 7 CFR 3016.36(d) (2) (i)(ii) applies.

Competitive sealed bid procurement procedures will be used to purchase goods, equipment, and services where the aggregate cost is more than \$250,000.00* (revised August 1, 2018).

In order for sealed bidding to be feasible, the following conditions should be present:

1. Complete, adequate, and realistic specifications or a specific purchase description must be written or available;
2. Two (2) or more responsible bidders must be willing and able to compete effectively for the business; and
3. The procurement must lend itself to a firm, fixed-price contract and the selection of the successful bidder must be able to be made principally on the basis of price.

Bids will be publicly solicited (formally advertised) once per week for two weeks in a local newspaper of general circulation, per California PCC section 2110-20118. The advertisement will include the general nature of the goods or services to be procured; method of procurement that will be used; how more information can be obtained; and the due date for the responses to the solicitation. Bids will be posted on the MSD website and available to all potential bidders.

A bid conference, if held, will occur at least 2-4 weeks prior to the bid opening. All addenda or changes to bid documents will be published and/or provided to all bidders via a website provided in the original bid documents. All questions asked and answered will also be provided to all bidders.

A firm, fixed-price (lump sum or unit price) contract award will be made by written notice to the most responsive and responsible bidder whose bid is lowest in price, when all other factors are considered as defined in the evaluation criteria set forth in the bid.

1. A *responsive bid* is a bid that meets the administrative requirements of the solicitation.
2. A *responsible bid* is a bid where the firm is willing and able to furnish the goods or services solicited based upon business history and references.

The bids shall be solicited from an adequate number of known suppliers in sufficient time prior to the date set for opening the bids. The bid must be free of actions that might inhibit

competition and allow the vendor adequate time to complete the bid.

The bids will include any product specifications and pertinent attachments and shall define the items or services requested, quantities, technical requirements, type, cut, weight, packaging, quality and nutritional standards required so that the bidder can properly respond and so that each bidder can provide price quotes on the same items or services. When a brand name and code is used in the product description, the description will always include an “or equal” clause so as to not restrict competition.

Vendors bidding an item as an “or equal” product may be required to furnish to MSD a product specification sheet and sample case for testing and verification as an “or equal” product prior to the award of the bid.

Responses from vendors must be in writing, signed by the authorized authority to submit the bid, and returned in a sealed envelope on or before the date and time specified and to the place specified in the bid documents.

All bids must be opened at the time and place described in the bid documents. Any response to publicized bid requests shall be honored to the maximum extent practical. However, any and all bids may be rejected when there are sound documented reasons in the best interest of the MSD.

The MSD ensures that all cost-reimbursable contracts, including contracts with cost-reimbursable provisions, and all solicitations for cost-reimbursable contracts include provisions which require the return of rebates, discounts, and other applicable credits.

Evaluation factors used to score bids will be based on clearly described specifications indicated in the bid solicitation. All evaluation factors and their weighted importance will be listed in the bid. How bids will be evaluated and scored will also be described to all interested parties. The MSD documents and evaluates the bids received and have a method for evaluating proposals received and for selecting awardees. The evaluation process will ensure contractor integrity, compliance with public policy, and will consider bidder’s past performance, as well as financial and technical resources; all of which, when applicable, will be included in the original bid solicitation. The evaluation criteria included in the bid must be evaluated prior to evaluating price and price must be the highest weighted factor. There should be a committee of at least 2 persons who did not write the bid who will evaluate the technical criteria of the bids. The bid is to be awarded to the most responsive and responsible vendor who submitted the lowest price, as determined by the evaluation criteria.

Mathematical errors and small errors that are immaterial to the bid may be accepted by the MSD and may not deem the bid nonresponsive.

Negotiation can occur between the MSD and one (1) or two (2) bidders whose bid most closely meets the District’s needs. The best and final award will be made to the most responsive and responsible bidder whose proposal is most advantageous to MSD, with price and other factors considered. When all other conditions apply, the MSD may select a responsive, responsible bid if only one (1) bidder applies and the competitive bid process was followed.

When the MSD chooses, purchases may be made through a cooperative agreement or piggybacking with other school districts when all procurement procedures are followed as

required. For piggybacking, MSD must obtain permission from the district awarding the bid and the vendor who was awarded the bid. A copy of the bid, including the piggyback clause; proof of advertising, and proof of award from the district's School Board must be kept on file for the current year plus three years by MSD.

Bid proposals will be retained by the MSD with other program documentation and records for a period of three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved. The recommendation for bid award must be submitted to MSD's School Board for the award of the bid. In addition, the MSD must maintain on file a copy of the bid; proof of advertising; and bid award documents from the awarding School Board for the current year, plus three additional years.

Protest Procedures

Any actual or prospective bidder may protest a bid award if he/she believes the award is not in compliance with the law, does not follow bid procedures, or does not meet bid specifications. A protest must be filed with the MSD. Such protests must be made in writing and received by the MSD within five working days of bid award date and shall include all documents supporting or justifying the protest. The protesting party must mail or deliver copies of the protest to the MSD. A bidder's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract.

In the event of a timely protest, the MSD shall not proceed further with the solicitation or award of the contract until the protest is resolved.

The MSD shall review the documents submitted with the bidder's claims and render a decision in writing within 30 working days. The MSD may also convene a meeting with the bidder in order to attempt to resolve the problem.

If the bidder is not satisfied with the MSD's decision, the bidder may appeal to the MSD School Board. The MSD shall provide notice to the bidder of the date and time for Board consideration of the protest at least three business days before the Board meeting. The Board's decision shall be final. The following shall be provided to the MSD School Board for review:

1. A specific identification of the statutory or regulatory provision that the protesting party alleges has been violated.
2. A specific description of each action by the district that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified.
3. A precise statement of the relevant facts.
4. A statement of any issues of law or fact that the protesting party contends must be resolved.
5. A statement of the argument and authorities that the protesting party offers in support of the protest.
6. A statement that copies of the protest have been mailed or delivered to the MSD and all other identifiable interested parties.

The MSD's School Board may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal. The MSD may solicit written responses to the protest from other interested parties.

If the protest is not resolved by mutual agreement, the MSD's School Board shall issue a written determination that resolves the protest.

1. If the MSD's School Board determines that no violation of statutory or regulatory provisions has occurred, then the district shall inform the protesting party and other interested parties by letter that sets forth the reasons for the determination.
2. If the MSD's School Board determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, then the MSD shall inform the protesting party and other interested parties of that determination by letter that details the reasons for the determination and the appropriate remedy.
3. If the district determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, then the MSD shall inform the protesting party and other interested parties of that determination by letter that details the reasons for the determination. This letter may include an order that declares the contract void.

The MSD shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of the MSD.

Contract Monitoring

In order to ensure that all vendors adhere to the contract, the MSD has the following rights, which must be included in contract language:

1. **PRODUCT INSPECTION:** All items shall be subject to the inspection of MSD. Defective items shall be made good by the successful vendor, and unsuitable items may be rejected. If any item shall be found defective at any time before final acceptance of the complete delivery, the successful vendor shall immediately remedy such defect in a manner satisfactory to the MSD.
2. **RIGHT TO AUDIT:** Vendor acknowledges the MSD's right to conduct an appropriate audit of the books and records maintained by vendor, in connection with the goods and services provided to MSD under this Agreement. For contracts with fixed cost plus delivery fee, MSD may audit awarded items at a minimum to verify vendor is charging the correct fixed pricing.
3. **PRICING DISCREPANCY PENALTY:** MSD shall verify all pricing on invoices with awarded bid pricing. Should vendor overcharge for any item, MSD will request full reimbursement for the overcharge. The second time the vendor is notified of an overcharge, MSD will assess an additional two hundred percent (200%) penalty. By way of example only, should vendor charge \$100.00 for items that it should have actually charged \$50.00, vendor will immediately reimburse MSD the sum of \$50.00 for the overcharge together with an additional sum of \$100.00 for the penalty, for a total payment of \$150.00.

Contractor Involvement

Potential vendors are not permitted to assist the MSD in developing the specifications, bid documents, or contracts.

When possible, small and minority businesses, women's business enterprises and labor surplus area firms will be given preference. The MSD does not purchase from other governmental agencies or purchase surplus property in lieu of purchasing new equipment.

Successful bidders must certify that they practice equal employment opportunity and that they do not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The successful bidder shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such actions shall include, but are not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other form of compensation; and selection for training, including apprenticeship.

Insurance

The MSD will require the successful bidder to provide proof of having and maintaining, during the life of any contract, Public Liability and Property Damage Insurance to protect themselves and the MSD from all claims for personal injury, including accidental death, as well as from all claims for Property Damage arising from operations under this contract. The minimum amounts of such insurance shall be as hereinafter set forth. The successful bidder will be required to furnish certificates of insurance prior to start of work.

1. Bodily Injury and Accidental Death Liability Insurance including auto (both owned and non-owned): Not Less Than \$1,000,000/\$1,000,000 Aggregate.
2. Property Damage Liability Insurance including auto (both owned and non-owned): Not Less Than \$1,000,000 Aggregate.
3. Insurance certificate must name each district as additional insured.

Certificates must be submitted by successful bidder to MSD prior to the start of deliveries.

The MSD will not enter into a contract with any company or individual that has been debarred or suspended.

Vendors awarded contracts are required to submit a completed Affidavit of Noncollusion, Debarment and Suspension Certificate, Certification of Lobbying, and Disclosure of Lobbying activities prior to commencement of work.

Small Purchase Procedures

Small purchase procedures are those relatively simple and informal procurement methods for procuring goods, services and where the aggregate cost is less than the threshold set by the State and Federal government, whichever is less. Currently, the threshold is \$250,000.00* (revised August 1, 2018).

When small purchase procedures are used, the following conditions, stipulations, and terms must be met:

- a. Price or rate quotations shall be obtained from an adequate number of qualified sources (preferably three) in writing.
- b. Quotes shall be documented in writing and compared based on product or service quoted and price. And
- c. Final selections shall be made by the Food Services Department based upon what price and or other key factors, such as installation and/or delivery timing that is most advantageous to the Department.

The goods, equipment, or services to be purchased will be adequately and consistently

described for each prospective supplier so that each one can provide price quotes on the same merchandise or service. These specifications must be written. Specifications must be sent by fax or e-mail or other written communication to an adequate number of vendors.

Responses from vendors must be in written form. Verbal quotes will not be accepted.

Price quotation response will be retained by MSD with other program documentation and records for a period of three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved. The MSD will utilize its purchase documentation form and/or vendor contract form for this purpose.

Micro-Purchase Procedures

When micro purchasing procedures are used, the following conditions, stipulations, and terms will be met:

- a. The aggregate value of the single transaction is under \$10,000.00 (revised August 1, 2018);
- b. the District considers the price to be reasonable; and
- c. the determination that the price is reasonable is documented and included in the procurement file.

The Food Services Department will document all price quotes received (preferably 3).

The Food Services Department will attempt to distribute micro-purchases equitably among qualified supplies and the suppliers will be determined by first deciding which goods and/or services are needed and then obtaining price quotations via email to qualified vendors. The Food Services Department will evaluate offers and conduct negotiations as applicable.

For emergency equipment repair, repair work will be distributed amongst those vendors who are familiar with the brand of equipment the District uses and is authorized to work on that brand by the manufacturer and can respond within 24 hours.

The Food Services Department will then select the quote and award the single purchase contract to the firm whose offer is most advantageous to the Department, and who is able to meet the needs of the Food Services Department in terms of price, delivery, and product quality and product specifications.

Invoices for micro purchases will be retained by the SFA with other program documentation and records for a period of three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved.

Procurement by Non-Competitive Proposal

Procurement by noncompetitive proposals will only be used by the MSD when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one (1) of the following circumstances applies:

1. the item is available only from a single source;
2. an emergency exists that will not permit a delay allowing for a competitive solicitation; and
3. after solicitation of a number of sources, competition is determined inadequate.

The decision to use noncompetitive proposals will be justified in writing, approved by CDE, and

be available for audit and review.

Procurement Standards

All employees and agents representing the MSD must conduct all procurement transactions in a manner that allows for full and open competition consistent with the standards stated in 2 CFR Section 200.319.

The MSD ensure, to the maximum extent possible, that domestically produced and processed (Buy American) foods are purchased.

“BUY AMERICAN” PROVISION

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the NSLA (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodity or product. Section 12(n) of the NSLA defines “domestic commodity or product” 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. “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 allowed under this provision as territories of the United States.

Federal regulations require that to the maximum extent possible, only domestic products be purchased consistent with the “Buy American” provisions of Public Law [PL 100-237] when purchasing commodities for the school lunch program. Therefore, vendors offering product and/or products ingredients manufactured or grown in the United States may be given priority for usage under this proposal. This policy will allow for an exception only in the case when an acceptable product is not available domestically, in which case other countries of origin may be considered or purchased.

The MSD will avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

To ensure objective vendor performance and eliminate any unfair competitive advantage, vendors that develop or draft specifications, requirements, statements of work, invitations for bid, or requests for proposal must be excluded from competing for the bid [2 CFR, section 200.319 (a)].

Actions that restrict competition include, but are not limited to:

- placing unreasonable requirements on firms in order for them to qualify to do business;
- allowing geographic preference to be so restrictive as to limit the number of qualified firms that may compete for the contract;
- requiring unnecessary experience or bonding;
- conducting noncompetitive pricing practices between firms;
- awarding noncompetitive contracts to consultants who are on retainer contracts;
- allowing organizational conflicts of interest;
- specifying a brand name product without allowing an equal product to be offered by describing product performance or descriptors or indicating “or equal” as an acceptable

- alternative; and
- engaging in an arbitrary action during the procurement process, such as awarding a contract, without a valid reason, to a vendor that did not rank first (or lowest in price) according to the agencies evaluation criteria when awarding a contract.

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, audiotope, 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, 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.

(*This amount will be adjusted annually based on the California State Superintendent of Public Instruction's calculations.)