**Ethics and Code of Conduct**

**And Prohibition on Provisions in Solicitation That Unduly Restrict Competition**

As required by 2 Code of Federal Regulations parts 2 CFR §200.318 (a) – (c) of General procurement standards.

*(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.*

*(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.*

*(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.*

*(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.*

**The SFA follows the Following Ethics and Code of Conduct**

As representatives of the school food service department, all employees are expected to conduct themselves in a professional and ethical manner, maintain high standards of integrity, and use good judgment. Employees are expected to be principled in their business interactions and act in good faith with individuals both inside and outside the school food service department.

The following Code of Conduct shall govern the performance, behavior, and actions of the school food service department, including board members, employees, directors, volunteers, or agents who are engaged in any aspect of procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, or the administration and supervision of contracts.

**Code of Conduct**

1. No employee, officer, director, volunteer, or agent of the school food service department shall participate in the selection, award, or administration of a contract supported by federal, state, or local funds if a conflict of interest is real or apparent to a reasonable person.
2. Conflicts of interest may arise when any employee, officer, director, volunteer, or agent of the school food service department has a financial, family, or any other beneficial interest in the vendor firm selected or considered for an award.
3. No employee, officer, director, volunteer, or agent of the school food service department shall do business with, award contracts to, or show favoritism toward a member of his/her immediate family, spouse’s family, or to any company, vendor, or concern who either employs or has any relationship to a family member; or award a contract which violates the spirit or intent of federal, state, and local procurement laws and policies established to maximize free and open competition among qualified vendors.
4. The school food service department’s employees, officers, directors, volunteers, or agents shall neither solicit nor accept gratuities, gifts, consulting fees, trips, favors, or anything having a monetary value in excess of \_\_\_ dollars from a vendor, potential vendor, or from the family or employees of a vendor, potential vendor, or bidder; or from any party to a sub agreement or ancillary contract.

**Disciplinary Action.** Disciplinary action may result from the violation of work rules, from failure to carry out job instructions and assignments properly, or from violation of any law. Disciplinary action shall be progressive and for the purpose of correcting conduct. However, acts of Serious Misconduct (Section C) or other situations may be determined to be of such a serious nature that immediate dismissal is necessary.

It must be recognized that, since each case is different, it is impossible to prescribe a specific penalty for a particular offense. In accordance with Chapter 410 of the Wisconsin Human Resources Handbook (WHRH), a Letter of Expectations may be issued when the behavior of the SFA and/or vendor is not severe enough to warrant formal discipline. Disciplinary actions are cumulative from the effective date of the letter of the first violation until the SFA and/or vendor employee is free from any further discipline for 12 months at which time a progression step may be repeated versus increased to the next level. The level of discipline may be reduced if the employee remains discipline free for longer durations.

**Prohibition on Provisions in Solicitation That Unduly Restrict Competition**. The school food service department shall not include in a solicitation any feature that unduly restricts competition. Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

1. **Excessive Qualifications**. Imposing unreasonable business requirements for bidders or offerors.
2. **Unnecessary Experience**. Imposing unnecessary experience requirements for bidders and offerors.
3. **Improper Prequalification**. Using prequalification procedures that conflict with federal, state, or local regulations.
4. **Retainer Contracts**. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.

Term Defined: A retainer contract is a work for hire [contract](https://en.wikipedia.org/wiki/Contract). It falls between a one-time contract and full-time employment. Its distinguishing feature is that the employer pays in advance for work to be specified later. Additional contracts regarding the performance of this work may also apply.

It is common for a person seeking the services of a lawyer (attorney) to pay a retainer ("retainer fee") to the lawyer, to see a case through to its conclusion. A retainer can be a single advance payment or a recurring (e.g., monthly) payment.

A retainer fee can be paid on a fixed, pre-negotiated rate or on a variable hourly rate depending on the nature of retainer and, the practice of the lawyer/advocate being retained. Both models exist in the industry. The purpose of a retainer fee is to ensure payment for future services or work to be rendered. Absent an agreement to the contrary, a retainer fee is refundable if the work is not performed.

1. **Excessive Bonding**. Requiring a bonding that far exceeds the requirements described in federal, state, or local regulations.
2. **Brand Name Only**. Specifying only a “brand name” product without allowing offers of “an equal” product, or allowing “an equal” product without listing the salient characteristics the “equal” product must meet to be acceptable.
3. **In-State or Local Geographic Restrictions**. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by state or local laws or regulation except as permitted by federal regulations. See section of the Procurement Policy and Procedures Manual for application of geographic restrictions.
4. **Restraint of Trade**. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to, submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.
5. **Arbitrary Action**. Taking any arbitrary action in the procurement process.

Term Defined: An arbitrary action is an action, determination, or selection founded on individual discretion, especially when based on one's opinion, judgment, or prejudice, rather than on fixed rules, procedures, or law.

1. **Excessively Specific Qualifications**. Developing specification and evaluation criteria which unnecessarily favor a particular contractor.
2. **Arbitrary Contract Splitting**. Splitting larger procurements into multiple smaller procurements to evade competition requirements at certain ordering thresholds.