

Section 16a

Contract Management

Section 16a, Contract Management

Update Guide

July 28, 2022	Clarified information on the following topics: <ul style="list-style-type: none">- Definitions
August 16, 2021	Updated <i>Section 16a, Contract Management</i> to correct minor typos. Clarified information on the following topics: <ul style="list-style-type: none">- Contract duration- Definitions
August 12, 2020	Created <i>Section 16a, Contract Management</i> and updated the <i>Administrator's Reference Manual (ARM)</i> sections references. Guidance for this new section was taken from the <i>Administrator's Reference Manual (ARM), Section 17, Procurement</i> .

Table of Contents

Written Procurement Procedures Related to Contract Management	7
Program Integrity and Internal Controls	7
Responsibility for Contract Implementation.....	7
Definitions for This Section	8
Effective Management of Contracts and Agreements	16
Additional Purchase beyond the Quantity Expressed in the Solicitation and Contract	16
Material Change.....	16
Market Basket	16
Additional Purchase of Already Procured Items from Another Source	16
Off Contract Purchases	16
Bonding Requirements (if required)	17
Buy American	17
Purchased Made on Behalf of the CE.....	17
Consultant Contracts	17
Contingency Approval	17
Cooperative Purchasing	18
Cooperative Fee	18
Credits, Discounts, and Rebates and USDA Foods Values	18
Audit Clause.....	18
Inability of Contractor to Meet Terms and Conditions for Crediting.....	18
Duration of Contract	19
Consolidation	19
Contract Duration Period	19
Renewal Options.....	19
Food Product Documentation	20
Food Safety	20
Franchise Agreements (If Applicable)	20
Invoicing and Payments	21
Modifications to the Cost of a Renewable Contract	21
Modifications to a Renewable Contract, Flexibility for Anticipated Changes	21
Anticipated Growth	21
Material Change.....	22
Piggybacking.....	22
Other Regulatory Requirements	22
Ownership of Equipment or Software	22
Professional Certification and Professional Development (As Required)	22
Specifications, Technical Requirements, and Terms and Conditions	22
Contract Disputes	23
Documentation	23

Procedures	23
Termination/Non-Renewal of a Contract	23
Future Contracts	24
Third-Party Contracts Procured on Behalf of the CE	24
Unallowable Contracts	24
USDA Foods	25
Contract Protests	25
Additional Resources	26
TDA Resources	26
Institute for Child Nutrition (ICN)	26
Other Websites	26
Records Retention	27
Third-Party Contracts	27
Duplicative Services	27
Compliance	29
Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations	30
Criminal Penalty	30
Fraud	30
Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds	30

Contact Information for the

Texas Department of Agriculture (TDA), Food and Nutrition

When contacting TDA by phone, Contracting Entities (CEs) need to have their CE Identification Number (CE ID) (and site ID, if applicable). CEs should include their name and CE ID (and the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address		Mailing Address	
1700 N. Congress, 11th Floor, Austin, TX 78701		PO Box 12847, Austin, TX 78711-2847	
Phone	877-TEX-MEAL, (877) 839 -6325	Email Contact	SquareMeals@TexasAgriculture.gov
Fax	(888) 203-6593	Website	www.SquareMeals.org

Questions about Program Applications

Child & Adult Care Food Program

CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program

NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option

SSO.BOps@TexasAgriculture.gov

Summer Food Service Program

SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations

CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)

Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)

School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)

DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)

FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures

NSLP-SBP.BOps@TexasAgriculture.gov

Claims

BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement

CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan

School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory

CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer

CommodityOperations@TexasAgriculture.gov

June 22, 2020

Contract Management

The guidance in this section is intended to assist contracting entities (CEs) in (1) establishing effective practices for managing contracts and agreements and (2) ensuring that all contracts and agreements are operated according to the applicable regulations and guidance.

The guidance in this section applies to contracts that are procured on behalf of the CE.

The guidance in this section applies to the following school nutrition programs (SNPs):

- National School Lunch Program (NSLP)
 - Afterschool Care Program (ASCP)
 - Fresh Fruit and Vegetable Program (FFVP)
 - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

The guidance in this section is intended to be used with the procurement and financial guidance provided in the following *Administrator's Reference Manual (ARM)* sections:

- *Section 14, USDA Foods*
- *Section 14a, USDA Foods Processors*
- *Section 15, Program Integrity*
- *Section 16, Financial System*
- *Section 17, Procurement*
- *Section 17a, Procurement Procedures*
- *Section 17b, Buy American*
- *Section 17c Cooperative Purchasing*
- *Section 18, Food Service Contracts*
- *Section 23, Food Product Documentation*
- *Section 26, Food Safety*
- *Section 27, Professional Standards*
- *Section 30, Records Retention*

Information Box 1

Additional Resources for Procurement

Texas Comptroller of Public Accounts

The website for the Texas Comptroller provides information on state regulations that apply to state and local governmental entities. Available at www.comptroller.texas.gov/

Resources include the following:

- *Model Purchasing Manual for Texas Cities and Counties 2010*—information that applies to all governmental entities, including schools. Available at www.texasahead.org/lga/finances/purchasing/96-449_Model_Purchasing_Manual_11_10.pdf
- *State of Texas Contract Management Guide*—guidance and recommendations on improving existing contract management methods and practices. Available at www.comptroller.texas.gov/purchasing/publications/contract-management-guide.php

Texas Education Agency (TEA)

Financial Accountability System Resource Guide provides detailed guidance of financial accountability, including Module 5, Purchasing, for local education agencies and charter schools. Available at www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/

United States Office of Management and Budget (OMB)

2 Code of Federal Regulations, Part 200—These regulations provide detailed information on required federal procurement process. Available at www.fns.usda.gov/es/node/73141

Written Procurement Procedures Related to Contract Management
CEs are required to have written procurement procedures that reflect applicable local, state, and federal regulations that include, but are not limited to, checks and balances that provide internal controls for all financial matters including contract management. For detailed guidance on procurement procedures, see the *Administrator's Reference Manual (ARM), Section 17, Procurement Procedures*.

[NOTE: The requirement for written procedures also applies to agreements.]

Program Integrity and Internal Controls

The procurement process is intended to promote program integrity and establish internal controls.

Program Integrity is defined as an organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds.

Contract management is a central factor in developing an effective financial management system that provides safeguards to ensure the stewardship of federal money and reduce fraud and improper payments by the use of internal controls. *Administrator's Reference Manual (ARM), Section 15, Program Integrity* provides detailed guidance on program integrity.

Responsibility for Contract Implementation

The CE is responsible for ensuring that a contract is compliant with all program regulations. Ensuring compliance is a central component of managing contracts even if a food service management company (FSMC) operates the program on behalf of the CE.

Information Box 2

Implementation of 2 Code of Federal Regulation (CFR) Part 200

The updates to this section include the consolidated 2 Code of Federal Regulation (CFR) Part 200 which replaced existing rules at 7 CFR Parts 3015, 3016, 3019, and 3052, and the following Office of Management and Budget (OMB) guidance documents; 2 CFR Part 220 (A-21), A-50 (sections related to audits), 2 CFR Part 225 (A-87), A-89, A-102, A-110, 2 CFR Part 230 (A-122), and A-133.

2 CFR Part 200 primarily serves to consolidate the previous regulations into one location as a convenience and for clarity. For procurement, 2 CFR Part 200 clarifies existing regulation and adds one new flexibility—micro-purchasing.

[NOTE: 2 CFR Part 200 also applies to all financial and accounting practices. *Section 17, Procurement* only addresses issues related to procurement. Other finance and accounting issues are addressed in Section 14, Financial Information Concerning School Nutrition Funds.]

Conflicting Program Regulations

For CEs operating Child Nutrition Programs (CNPs), there are federal, state, and local regulations that govern the actions of the CE. When there is a conflict between USDA regulations and other regulations, the CE must follow USDA regulations for the use of CNP funds. If other applicable federal, state, or local regulations do not conflict with USDA regulations, the CE will follow the most restrictive other federal, state, or local regulations. All programs that receive federal funds are required to follow 2 CFR Part 200 unless federal legislation supersedes 2 CFR Part 200.

Education Department General Administrative Regulations (EDGAR)

CEs receiving funds through the United States Department of Education are required to follow the regulations described in the *Education Department General Administrative Regulations (EDGAR)* for those funds, which incorporates 2 CFR Part 200. However, Child Nutrition Programs (CNPs) are required to follow USDA regulations for financial management, including procurement. While there are regulations in EDGAR that conflict with USDA regulations, in most situations, CEs will find the regulations to be compatible. However, if there is a regulatory conflict, CEs are required to follow the USDA regulations for all CNP funds (income, allowable and unallowable costs, and procurement).

Definitions for This Section

The nature of financial processes fosters the use of terms and vocabulary that are more commonly used by accountants than by school nutrition staff. For School Nutrition Programs (SNPs), the following financial and procurement terms are used:

Acting on Behalf of CE	Entity or person who has been given the responsibility to act for the CE.
Agent	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
Aggregate Purchase Amount	The total cost of all products and services in a single procurement transaction.
Agreement (for School Nutrition Programs)	Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.
Allocable	Assigning a cost, or group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship—the cost meets one of the following principles: <ul style="list-style-type: none"> - is incurred specifically for the award/program <u>or</u> - benefits both the award/program and necessary work and can be distributed in reasonable proportion to the benefits received <u>or</u> - is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
Allowable	Direct or indirect costs that may be paid by SNP funds.
Approved Supplier List	List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources.
Arms-Length Transaction	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other’s control or dominant influence, and the transaction is treated with fairness, integrity, and legality. <p style="text-align: center;">Less than Arms-Length Transaction</p> A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.
Audit	Independent examination of accounting and financial records for accuracy, efficiency, and consistency. This is also called the annual audit or single audit.
Audit Report	Final summary of audit findings provided by a financial auditor.
Audit Corrective Action Plan	Plan in which the CE describes the strategies or actions the CE will adopt to address each finding reported in the audit report.
Audit Summary Schedule or Work Plan	Document that contains a cumulative list of audit findings by year and explanations of the strategies and actions the CE plans to take or has taken to resolve each audit finding. This summary allows the CE, auditor, or TDA staff member to review the actions planned or taken from year to year to maintain an accurate, efficient, and consistent accounting and financial system.
Bid Guarantee	Guaranteed percentage of bid price provided by the offeror at the time the offer is submitted. The CE must return all bid guarantees to all unsuccessful offerors when the contract is awarded and to the winning offeror as soon as the contract is signed.

Bond	Insurance agreement pledging surety for financial loss caused in connection with the contract. For school nutrition programs, if a loss occurs in connection with a contract related to program operations, the loss will be covered to the extent agreed upon in the bond.
Breach of Ethics	Attempt to realize personal gain through public employment with a CE by any conduct inconsistent with the proper discharge of the employee's duties.
Brokers	Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.
Buy American	Requirement for schools to purchase, to the maximum extent practicable, domestic commodities, and products. A domestic commodity or product means an agricultural commodity that is grown in the United States <u>and</u> processed in the United States or that is processed in the United States substantially using agricultural commodities that are produced in the United States.
Capital Assets	Land, buildings (facilities), and equipment that have a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP).
Capital Expenditures	Direct cost expenses to acquire capital assets or to make additions, improvements, modifications, replacements, reinstallations, renovations, or alternations to capital assets to be used for general purposes for multiple years and which materially increase the value or useful life of the asset. ¹
CE Employee (Specific to Program Integrity)	Term used in this section to represent a CE employee or official; family member of CE employee or official; or business partner of a CE employee or official.
Charge Period	Span of time during which a cost is paid. This payment process includes spreading payments over a period of weeks or months or establishing milestones that are linked to payments.
Code of Conduct	Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization and which governs the following: <ol style="list-style-type: none"> 1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. 2. Methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE's contracts.
Cognizant Agency Related to Indirect Costs	Agency that has primary responsibility for negotiating the indirect cost methodologies for non-federal entities.
Conflict of Interest	Any action that allows a person to benefit at the expense of the public interest or the expense of an employer. A conflict of interest may be a real or apparent conflict of interest.
Contract	Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensation the contractor receives when products and/or services are provided.
Consultant	Consultant that provides <u>temporary</u> support to the CE in areas where the CE lacks the necessary resources, skills, and/or abilities in order to assist the CE in gaining the necessary resources, skills, and/or abilities to operate an effective and compliant program.
Cooperative Purchasing	Group of entities who join together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of CEs.

¹ TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

Cost Analysis	Review and evaluation of each element of cost to determine reasonableness, allocability, and allowability for products and/or services to be procured. A cost analysis will include the total projected cost for the products and/or services to be procured.
Cost Index	Tool designed to show the impact of an economic measure on the price of purchasing a specific type of item. TDA has approved the use of the Consumer Price Index (CPI) Food Away from Home for this purpose.
Cost Objective	Program function or activity for which cost data and for which specification is made to accumulate and measure the cost of processes, products, jobs, or other expenses.
Cost Plus Percentage of Cost	Method of pricing where the contract or agreement creates a pricing structure that charges the cost of the product or service plus a percentage of the cost. This pricing structure is not allowable for any purchase under USDA regulations. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
Cost-Reimbursable Contract	Reimbursable contract that is a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract but does not provide for any other payment to the contractor with a fixed fee or with a cost-reimbursement fee. [NOTE: The fixed fee associated with these types of contracts may be called management fees or administrative fees.] In a cost-reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. In a cost-reimbursable contract, the fixed price (fee) includes the contractor's direct and indirect administrative costs and profit allocable to the contract.
Debarment	Action taken by a debarment official to exclude a person from participating in covered transactions. ² A person so excluded is debarred, that is, unable to participate.
Direct Cost	Expenses that can be identified specifically with a particular cost objective used to meet a specific program goal or goals.
Distributor	Commercial food company that purchases, receives, and/or stores commercial food products and then sells, delivers, and bills the recipient agency for goods and/or services provided.
Drop Delivery	Delivery to one location within the CE, such as a central warehouse.
Economies of Scale	Purchase of large quantities of a product and/or service in order to obtain a better price.
Escalator/De-escalator Clause or Market-based Pricing	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
Equipment (Property)	Items which have been purchased and are nonexpendable; items have a useful life of more than one year. Equipment purchases of \$5, 000 or more are capital expenses and require prior approval. ³
Ethics	Principles of conduct governing and guiding decisions for an individual or a group in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
Excess Net Cash Resources (Excess Fund Balance)	Net cash resources that exceed three months of operating expenses. For NSLP and SBP, an excessive fund balance refers to net cash resources.

² Covered transactions in this section refer to transactions related to child nutrition programs.

³ See the *Capital Expenditures* subsection in this section for additional information on this requirement.

Exclusive Contract (Including Exclusive Beverage Contracts)	Contract between an entity or organization and a distributor/vendor that prevents the entity or organization from buying or selling similar products from other distributors/vendors. The distributor/vendor may offer the entity or organization financial, product, or service incentives for signing an exclusive contract.
Expenditures (Costs)	Amount of money that is spent on an item or service.
Firm Fixed-Price Contract (Also Called Firm Price Contract)	Contracts that provide products or services for a price not subject to adjustment other than increases or decreases tied to an economic indicator stipulated by contract. Firm-fixed price contracts are usually negotiated where reasonably finite specifications and/or technical requirements are available, and costs can be estimated with reasonable accuracy. A fixed price contract places minimum administrative burden on contracting parties but subjects a contractor to maximum risk arising from full responsibility for all cost escalations.
Fixed-Price	Agreed-upon amount of money that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to the Consumer Price Index (CPI) Food Away from Home.
Fixed Price (Fee)	Agreed upon amount of money that is fixed at the inception of the contract.
Food Service Management Company (FSMC)	Any organization, whether commercial enterprise or a nonprofit organization, that is or may be contracted by the CE to manage any aspect of the school food service. ⁴ CEs must use an FSMC from TDA's list of approved FSMCs.
Food Service Management Company (FSMC) Solicitation/ Contract	TDA term used to <u>reference the TDA prototype combined solicitation and contract</u> . This term is applicable to this section only.
Forecasting	Process of analyzing current and historical data to determine procurement needs. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement timelines and tasks to evolve each fiscal year.
Full and Open Competition	Situation where all potential contractors are competing on a level playing field and have the same opportunity to compete and be awarded a contract. Full and open competition is also commonly referred to as free and open competition
Fund Balance (Net Cash Resources)	See "net cash resources."
Grade Standards	USDA quality standards based on measurable attributes that describe the value and utility of the products.
Grantees	Governmental or other legal entity to which a grant is awarded where the receiving entity is held accountable for the use of the funds provided. The grantee is the entire legal entity <u>even if</u> only a particular component of the entity is designated in the grant award document.
Incentives	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
Indirect Cost	Expenses that are incurred for the benefit of multiple programs or functions and are necessary for the general operation of the SNP program—but cannot be directly attributable to the program.
Indirect Cost Rate	Established percentage of awarded funds that is dedicated to pay costs that have been identified as indirect costs.

⁴ If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.

Internal Controls	Procedures or processes designed to establish and maintain effective internal control over the SNP's financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award. These procedures or processes help the CE to (1) define actions related to financial management and the procurement activities, (2) establish standards of ethical conduct, and (3) provide full and open competition.
Invitation for Bid (IFB)	Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors.
Just-in-Time (JIT)	Food and supplies kept in quantities an entity anticipates will meet its immediate needs, which results in the entity maintaining a low inventory level.
LEA	Local education agency, an entity having administrative control and direction of a public or private nonprofit elementary or secondary school. ⁵
Lead Time	Amount of time necessary for a distributor to prepare and deliver products and/or services to the CE.
Local Product	Unprocessed locally grown or raised agricultural products that retain their inherent character.
Managing the Contract	Procedures the CE has in place to ensure that contractors perform in accordance with the specifications, technical requirements, and terms and conditions described in a contract or purchase order.
Market Basket	Solicitation strategy that allows a CE to procure a list of products with varied pricing options for a finite number of products. Each product on the market basket list must have (1) a description with the quantity to be purchased, (2) specifications and/or technical requirements for each product, and (3) a description of how each product will be awarded on the contract.
Market Basket, Total Cost Analysis and Scoring	Analysis and scoring evaluation based on the aggregate total cost or by line item total.
Market Basket, Simplified Total Cost Analysis and Scoring	Analysis and scoring evaluation based on a representative sample of all products.
Material Change	Change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough that had other offerors known of the change in advance, they may have bid differently and more competitively.
Meal Equivalency Factor (MEF)	Statistical tool that is used to convert a la carte sales into a standard of measure, in this case a "meal." The MEF is often used to convert a la carte sales into meal equivalents for billing purposes in fixed price contracts.
Micro-purchase Method	An acquisition of supplies or services using simplified acquisition procedures, the aggregate purchase amount of which does not exceed the micro-purchase threshold.
Necessary	Item or service that is essential to the operation of the program.
Negative Net Cash Resources (Fund Balance)	A CE must not carry negative net cash resources into the next school year. Negative net cash resources exist when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.

⁵ This definition is taken from USDA regulation.

Net Cash Resources	Amount of funds the SNP account has available to spend—total revenue less total liabilities (expenditures). USDA further defines Net Cash Resources as This includes all monies, as determined in accordance with the State agency’s established accounting system that are available to or have accrued to a school food authority’s nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds, or other negotiable securities.
Noncompetitive Method	Procurement method used when there is an insufficient number of offers submitted in response to a solicitation. In this case, full and open competition is deemed inadequate, and there is no way to remedy the situation.
Non-Federal Entity	State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
Open Award	Contract award in which all vendors that submit an offer are awarded a contract. This type of award does not promote full and open competition or pricing that is advantageous to the program. An open award is not the same as using a market basket strategy.
Operating Months	Months during which the CE operates any child nutrition program—NSLP, SBP, CACFP At-Risk, or a summer feeding program. This includes reasonable amounts of time to set up program operations before meal service begins and time to close program operations at the end of the meal service period. Days on which operational tasks occur may be for a full month of operation or a partial month of operation.
Operator	Entity that operates a Child Nutrition Program.
Operator-Only Cooperative	Any type of agreement that is formed solely among CNP operators, including regional education service center (ESC) cooperatives.
Pass-Through Entity	Entity receiving federal funds that have passed through another entity. This definition is specific to funding from federal sources and applies to state agencies, CEs, group purchasing cooperatives, and third-party entities. These funds are used to fulfill the purposes of a federally funded program.
Payment Bond	Bond that covers the cost of materials and works for construction contracts.
Performance Bond	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.
Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events or financial transactions. For this section, the word procedure is used to refer to all of these types of documents.
Procurement	Act of obtaining of goods or services in exchange for money or value. [NOTE: Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.]
Procurement Standards	Standards of conduct that shall govern the performance of the CE’s officers, employees, or agents in contracting for payment and expending program funds. State and federal procurement regulations require each CE to maintain written standards of conduct, including a code of conduct that prohibits employees from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them have a financial interest.
Program Integrity	Organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds. [NOTE: Program integrity includes practices associated with ethical standards and codes of conduct.]
Program Specific Audit	Review of the financial transactions—income and expenditures—and accounting procedures for a designated program.
Proprietary Products	Manufactured products ordered specifically for a particular program or are unique to a manufacturer.

Reasonable Cost	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.
Regulatory Authority	Oversight authority dictated by legislative act or regulation.
Request for Proposals (RFP)	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price or cost-reimbursable type contract.
Responsible (Offer)	Capable of providing the product(s) and/or service(s), as described in the solicitation.
Responsive (Offer)	Offer that addresses the terms and conditions of the solicitation, including the specifications and/or technical requirements for product(s) and/or service(s).
Revenue	Income received by an organization.
Revenue to the School Nutrition Program (SNP) Account	All income that is collected or awarded to the SNP account is revenue (or income) to the SNP account. This includes, but is not limited to, the following: <ul style="list-style-type: none"> – Federal reimbursement – State or local funds, such as per meal subsidies and state revenue matching funds – Students’ payment for reimbursable meals and a la carte sales – Payments for items purchased for fund raisers and vending machines – Income from catering and adult meals
Service Fee	Fee charged for the performance of a specific service.
Simplified Acquisition Threshold (Also Called Small Purchase Threshold)	Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be used.
Single Audit	Organization–wide review of the financial transactions—income and expenditures—and accounting procedures.
Sole Source Method	Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.
Solicitation	Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.
Specifications and Technical Requirements	Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.
State Matching Funds	Matching funds provided to local education agencies (LEAs) that participate in NSLP by the state of Texas based on the number of lunches reported on reimbursement claims filed during the period of September 1 through August 31 of the prior year. RCCIs and private schools do not receive state matching funds.
Subgrantees	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
Supplier (Sometimes Called Vendor)	Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.
Supplies	Items that are expendable or consumed in day-to-day activities and replenished as needed.

Tangible Benefit	Special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.
Terms and Conditions	General provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.
Third-Party	Entity that is contracted to act on behalf of another entity.
Third-Party Cooperative	<p>Any type of cooperative agreement that is formed by sources that are external to CEs which includes the following types of cooperatives:</p> <p>Non-Child Nutrition Program State Agency Procurement Agency Agreements Intergovernmental agreements with the State which may include public, private, and nonprofit entities and are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program operators to purchase from the State's contracted sources.</p> <p>Interagency Agreements Public, private, and nonprofit entities formed for the purpose of procuring goods and services.</p> <p>Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors (Collectively Referred to as GPOs) CNP and non-CNP operators such as public and private schools, hospitals, universities, law enforcement, public works, etc., who join a third-party company or service provider. A GPO may be a for-profit or a nonprofit entity. Typically, a GPO includes a membership fee for those granted access to the GPO price list of products and services.</p>
Transaction	Occurrence in which two or more entities exchange goods, services, or money between them or among them under an agreement formed for their mutual benefit.
Unallowable Cost	Direct or indirect cost that cannot be paid using funds from the nonprofit school food service account because the cost is not reasonable, allowable, and/or allocable. A cost that is unallowable for the CE is also unallowable for a third-party acting on behalf of the CE. The term <i>disallowed</i> is sometimes used in place of unallowable.
Unit Cost	Cost for a single item.
Value	Something of monetary or material worth or something that has a usefulness that can be exchanged for something of worth, merit, or importance.
Velocity Report	Report providing the quantity, date of purchase, and other valuable information for specific products and/or services purchased by CEs used to assist with forecasting future purchasing needs.
Vended Meal Contract	Contractor or merchandiser providing the CE with complete meals, meal components, and raw materials for the meal service.
Vendor Participation Fees	Charge to participate. The charge to participate may be paid by the participant, or it may be paid by those providing products and/or services.
Written Financial and Procurement Procedures	<p>Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take related to specific events, including financial and procurement transactions. For this section, the word <i>procedure</i> is used to refer to all of these types of documents.</p> <p>Procedures define the critical steps taken to establish and operate effective and efficient systems for (1) financial management, (2) procurement, and (3) management of contracts and agreements. Written procurement procedures may include a procurement plan with timelines and tasks, or a procurement plan may be a separate document from the procedures.</p> <p>Written financial and procurement procedures must be established by all CEs.</p>

Effective Management of Contracts and Agreements

It is the CE's responsibility to effectively manage all contracts the CE awards and all contracts procured on behalf of the CE. For this section, when the word *contract* is used, the guidance applies to both contracts and agreements.

The CE must have written procedures⁶ for contract management.

Contract management includes, but is not limited to, the following:

1. Ensuring that the use of nonprofit school food service account funds is compliant with federal, state, and local regulations and guidance;
2. Ensuring that all specifications, technical requirements, and terms and conditions of the contract are executed correctly; and
3. Ensuring the CE does not cover the cost of duplicative services.

Additional Purchase beyond the Quantity Expressed in the Solicitation and Contract

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure purchased products and/or services are included in the quantity described in the solicitation and contract.

Material Change

In the solicitation, each product and/or service to be purchased has a description which includes the quantity to be purchased. The purchase of an additional product and/or service beyond the quantity expressed in the solicitation and contract (i.e., added to an existing contract or piggybacking) may constitute a material change and may result in unallowable costs.⁷ CEs should exercise caution when purchasing any additional products and/or services from a vendor that is not included in the original solicitation and contract.

Market Basket

Exception—The market basket procurement strategy to solicit, evaluate, and award a contract provides an option for additional purchases under specific conditions.

Additional Purchase of Already Procured Items from Another Source

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure purchased products and/or services are made as described in the contract from the contractor.

Off Contract Purchases

When the contract is awarded, the CE is obligated to purchase the products and/or services listed on the contract from the contractor. The CE cannot buy these items from another vendor unless the quantity described in the contract has been exhausted, or the contract has been legally terminated.

⁶ See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional guidance on this topic.

⁷ An unallowable cost or expense cannot be paid using school nutrition program funds.

When the quantity is exhausted, or the contract has been legally terminated, the CE must correctly procure the products and/or services through a new solicitation.

Bonding Requirements (if required)

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure the bond is in effect for the required period of time.
- Notify the contractor when the required period of time for the bond to be in place ends.
- Release the bond, as appropriate, once the period of time for the bond to be in place ends.

Buy American

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement and Section 17b, Buy American*.

- Apply the Buy American requirements to all food purchases.

Purchased Made on Behalf of the CE

This includes requiring all contractors that purchase on behalf of the CE to meet the Buy American requirements.

- Maintain appropriate documentation when the CE determines an exception to the Buy American requirements are warranted.

Consultant Contracts

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement; Section 17b, Buy American; and Section 18, Food Service Contracts*.

- Limit consultant contracts to situations where the CE is addressing a short-term or temporary need when a CE lacks the necessary resources, skills, and abilities to manage and operate the program effectively.
- Apply the duration of contract requirements as described in the *Duration of Contract* subsection in this section.
- Review all services provided by the consultant routinely to ensure that the consultant's contract is making progress toward assisting the CE to obtain the necessary resources, skills, and abilities needed to manage and operate the program effectively.
- Apply the material change regulations to consultant contracts.

Contingency Approval

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure that if a contract has a contingency approval by TDA or for other purposes that contingency documentation is submitted and approved before the costs are incurred.

The CE must ensure that any costs incurred before the contingency approval is resolved are not paid with funds from the nonprofit school food service account.

Cooperative Purchasing

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 17, *Procurement* and Section 17c, *Cooperative Purchasing*.

- Ensure that the cooperative is providing services and operating as described in the cooperative agreement or contract.

Cooperative Fee

The contract must describe the fee to be charged to each CE, how those fees are to be collected, and how the cooperative will return any fee collected beyond the amount stipulated in the agreement or contract to each member.

- Establish a routine schedule to review documentation provided by the cooperative to ensure that the CE receives all credits, discounts, and rebates for all procurements conducted on behalf of the CE by the cooperative.
- Establish a routine schedule to review documentation provided by the cooperative (or vendors) to ensure that the CE receives all USDA Foods values for processed end products.
- Establish a routine schedule to review documentation to ensure that the CE receives credit for all vendor fees collected beyond the cost for providing services stipulated in the cooperative agreement.

Credits, Discounts, and Rebates and USDA Foods Values

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 14, *USDA Foods*; Section 14a, *USDA Foods Processing*; Section 17, *Procurement*; and Section 18, *Food Service Contracts*.

- Establish a routine schedule to review documentation provided by vendors to ensure applicable credits, discounts, and rebates and USDA Foods values are given to the CE.

Audit Clause

CEs may elect to include an audit clause in their solicitation and contract that is linked to payment for credits, rebates, discounts, and USDA Foods values. These clauses require the contractor to provide documentation that allows the CE to reconcile the payments for credits, rebates, discounts, and USDA Foods with invoices or other appropriate documentation at regular intervals. If the contractor does not provide sufficient documentation for the CE to perform the reconciliation, the contractor will not receive payment. This requirement applies, but is not limited to, to FSMC cost-reimbursable contracts, processing contracts, and cooperative purchasing.

Inability of Contractor to Meet Terms and Conditions for Crediting

If a contractor cannot honor the contract terms and conditions related to credits, discounts, and rebates or the values of USDA Foods by providing another product (like or unlike) to the CE to cover the rebated value, the CE must

receive the credit, discount, or rebate by one of the following methods:

1. Actual credit or discount amount documented on an invoice or statement.
2. Rebate payment in cash documented as appropriate.
3. Applied value documented on an invoice or statement.

Duration of Contract

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 17, *Procurement* and Section 18, *Food Service Contracts*.

- Ensure the length of the contract is applied correctly.

Consolidation

When CEs consolidate, current contracts or purchasing agreements are null and void. In this case, each CE is responsible for notifying on existing contractors of the change in situation. The consolidated CE will, then, issue solicitations and award new contracts as appropriate.

Contract Duration Period

All contracts must have a duration of no more than one year.

Renewal Options

A solicitation and contract may contain a renewal clause that allows up to four one-year renewals. Each contract renewal cannot exceed one year.

When a contract is renewed, the contractor continues to provide the products and/or services at the cost described in the solicitation and contract unless the solicitation and contract includes a modification clause as described in the *Modifications to the Cost of a Renewable Contract* or *Modifications to a Renewable Contract, Flexibility for Anticipated Changes* subsection in this section.

Before applying a contract renewal clause, it is the CE's responsibility to verify that the contractor continues to meet the specifications, technical requirements, and terms and conditions of the contract as described in the solicitation and contract. If the contractor does not meet these expectations, the contract cannot be renewed.

- Rebid contracts using proper procurement methods once the contract has reached the end of the maximum duration allowed.
- Perform close out procedures after the end of each contract, ensuring that the CE has received all products and/or services as described in the solicitation and contract.
- Review final invoices to ensure that all credits, discounts, and rebates and USDA Foods values have been provided to the CE.

Food Product Documentation

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 17, *Procurement* and Section 23, *Food Product Documentation*.

- Review documentation provided by the contractor to ensure that the CE is able to demonstrate that food products, including commercially prepared products, meet the meal pattern or competitive food standards.⁸
- Review invoices and food product labels to ensure that the food items are sourced as required by the Buy American provisions.

Food Safety

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 26, *Food Safety*.

- Establish a routine to review documentation to ensure that the contractor meets food safety and sanitation requirements, including, but not limited to, food safety inspections and hazard analysis and critical control point (HACCP) plan.
- Establish a routine to review documentation to ensure that sanitation and licensing requirements are met.

Franchise Agreements (If Applicable)

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 17, *Procurement*.

- Ensure that the specifications, technical requirements, and terms and conditions of franchise agreements are followed.
- Ensure that equipment purchases made with food service funds are properly procured.
- Ensure that franchise agreement restrictions do not create circumstances that cause the CE to be noncompliant with the meal pattern, competitive foods requirements, or other program requirements.
- Ensure that the operational practices of franchise are compliant with all local and state health and safety regulations related to the purchase and resell of food under the franchise agreement.
- Ensure that franchise agreements have a duration of no more than one year. See the *Duration of Contract* subsection in this section for additional information on this topic.

⁸ There is additional guidance specific to the meal pattern, competitive foods, and food product documentation in the *Administrator's Reference Manual (ARM)*, Section 8, *Breakfast Meals*; Section 9, *Lunch Meals*; Section 10, *Afterschool Snacks and Meals*; Section 17, *Procurement* and Section 18, *Food Service Contracts*; Section 22, *Competitive Foods*; and Section 23, *Food Product Documentation*.

Invoicing and Payments

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 16, *Financial System* and Section 17, *Procurement*.

Cost Reimbursable Contract	Fixed-Price Contract
For a cost-reimbursable contract, the CE must not make any payments to the contractor in excess of the contract's actual, net allowable costs stated in the contract.	For a fixed-price contract, the CE must not make any payments to the contractor in excess of the contract's quoted fixed price for products and/or services.

- Review invoices or cost statements routinely to ensure that invoices or cost statements indicate how and when all discounts, rebates, credits; USDA Foods values; and other applicable credits are given to the CE.
[NOTE: CEs may include a requirement for a routine auditing procedure as defined in the solicitation.]
- Ensure that invoices or statements provide the following information for each cost submitted for payment:
 1. Cost that is allowable and may be paid from the nonprofit food service account and
 2. Cost that is unallowable and must be paid from sources other than the school nutrition food service account.
- Ensure that all products and/or services invoiced correlate to the actual products and/or services received.
- Ensure that an adjustment or escalation clause is applied both upward and downward in alignment with the index at the frequency, as described in the solicitation and contract.⁹
- Review invoices prior to payment, including verifying information included on invoices to determine if costs are allowable.
- Ensure that the CE is not invoiced for or pays for duplicative services.

Modifications to the Cost of a Renewable Contract

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 17, *Procurement*.

- Ensure that any changes to the cost of products and/or services for a renewal contract are based on the Consumer Price Index (CPI) Food Away from Home as stipulated in the solicitation and awarded contract.

Modifications to a Renewable Contract, Flexibility for Anticipated Changes

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 17, *Procurement* and Section 18, *Food Service Contracts*.

- Ensure that modifications to the cost of contract to reflect the growth of services because of increased or decreased student population, opening or closing sites, or other demographic factors are implemented as described in the solicitation and contract.

Anticipated Growth

CEs may include the possibility of an increased or decreased number of products and/or services as long as the increase or

⁹ CEs may use the *Consumer Price Index (CPI) Food Away from Home* to allow a change in pricing for a contract for a contract with a multi-year renewal option. This is the only method to change the pricing structure for a fixed-price contract.

decrease is reasonable and is clearly outlined in the solicitation and contract. Commonly, this type of option is used (1) to communicate anticipated growth or decline in student population and participation at a specified site or sites or (2) to add or remove a Child Nutrition Program (CNP) at all sites or specified sites.

Material Change

If the growth exceeds what is described or is not included in solicitation and contract, it is likely a material change.¹⁰ When there is a material change, the contract must be rebid.

- Ensure that products and/or services are not added (commonly called piggy backing) to an existing contract unless the contract has a modification clause (described above) or is a market basket contract.

Piggybacking

Piggybacking on an existing contract may result in a material change and require a rebid of the contract.

Other Regulatory Requirements

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

- Ensure that all contracts procured on behalf of the CE include the provisions described in the *Other Regulatory Contract Requirements for Solicitations and Contracts* subsection in the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

Ownership of Equipment or Software

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 16, Financial System* and *Section 17, Procurement*.

- Ensure that CE is given ownership of any equipment or software purchased by a contractor on the CE's behalf.

Professional Certification and Professional Development (As Required)

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 27, Professional Standards*.

- Review documentation to ensure that contractor staff have professional certification requirements or minimum levels of required experience or education as required and/or described in the solicitation and contract.
- Review documentation to ensure that contractor staff have met the professional development training standards as required by regulations and as described in the solicitation and contract.

Specifications, Technical Requirements, and Terms and Conditions

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 17, Procurement* and *Section 18, Food Service Contracts*.

¹⁰ See the definition for material change in the *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional guidance on this topic.

- Ensure that all products and/or services and the scope of work¹¹ provided under the contract match the specifications, technical requirements, and terms and conditions of the awarded contract.
 - Are representative of the products and/or services to be delivered, as described in the solicitation and the contract—specifications, technical requirements, and terms and conditions.
 - Are delivered according to the timelines specified in the contract.
 - Are priced as quoted.

Contract Disputes

- Take action to remedy any circumstances where the contractor does not provide products and/or services that meet these expectations and apply the options to terminate or not renew a contract based as allowed by the terms and conditions of the contract.

Documentation

The CE must document efforts related to a possible or actual termination or non-renewal of a contract.

Procedures

When there is a dispute between the CE and the contractor, the CE must follow its written procedures¹² and term and conditions of the contract to resolve the dispute. This will include, but is not limited to, the following actions:

- Raise the issue with the contractor, communicating specifically how the problem is to be corrected in order to meet the specifications and/or technical requirements for the products and/or services, as described in the solicitation and contract.
- Provide the contractor written notification of the problem and state that immediate correction is expected, and failure to do so will be considered a breach of contract and could result in the cancellation of the contract.
- Provide this notification by a method that will date stamp the day sent, and the date received.

Many times, increased communication about area of concern will resolve the dispute. CEs may also find it helpful to consult with their legal counsel when determining appropriate responses.

Termination/Non-Renewal of a Contract

If a contractor continues to be unable to provide the contracted products and/or services, the CE must determine if termination of the contract or non-renewal of the contract is warranted. Should the CE choose to terminate the contract or not renew a contract, the CE will perform this action according to the terms and conditions of the contract.

¹¹ Detailed description of duties to be performed, hours of work, performance descriptions, levels of performance, and required outcomes

¹² See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional information on this topic.

In all cases, the CE must retain documentation to demonstrate what actions have been taken to resolve the issue and the result of each action.

Future Contracts

If the cancellation of the contract becomes necessary, the CE may take steps to disqualify the contractor from future bidding as a non-responsible offeror.

If a CE has a documented history of a contractor's poor performance, this documentation can be a cause for rejecting a bid with the lowest cost or best evaluation score. If the CE has not retained documentation of poor performance, there may not be sufficient evidence to reject a bid for this reason.

Third-Party Contracts Procured on Behalf of the CE

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 17, *Procurement*; Section 17c, *Cooperative Purchasing*; and Section 18, *Food Service Contracts*.

- Establish a routine process to review documentation routinely to ensure that the third-party contractor acts in the best interest of the CE.¹³
- Establish a routine process to review procurement documentation to ensure that all products and/or services procured by a third-party entity acting on the CE's behalf are procured according to USDA requirements.
- Monitor the amount of collected vendor fees, or similarly applied collections, that exceed the agreed upon costs for providing the CE with products and/or services is refunded to the CE.
- Monitor credits, discounts, and rebates and USDA Food values to ensure that they are received and applied as income in the nonprofit school food service account.
- Ensure that all third-party contractors adhere to the federal guidelines for real or apparent conflicts of interest, including, but not limited to, the following:

Unallowable Contracts

- Not allowing the third-party contractor to procure products and/or services from the third-party's parent company, subsidiary of the parent company, or other entities with the financial relationship to the third party.
- Not allowing the third-party contractor to provide information, documents, or contributes for a solicitation the third-party plans to respond to with an offer.
- Ensure that no third-party contract provides duplicative services that are also provided in another contract or third-party contract/agreement the CE has in place.
- Establish a routine process to review all documentation to ensure that the third-party contractor provides all needed documentation for the CE to demonstrate compliance.

¹³ TDA recommends review take place at least quarterly.

USDA Foods

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM)*, Section 14, *USDA Foods*; Section 14a, *USDA Foods Processing*; Section 17, *Procurement*; Section 17c, *Cooperative Purchasing*; and Section 18, *Food Service Contracts*.

- Establish a routine process to evaluate and assess remaining USDA Foods inventory on hand, in processing, and in storage to determine the most efficient use of USDA Foods.
- Review the progress and implementation of all USDA Foods contracts to ensure that the specifications, technical requirements, and terms and conditions of all solicitations and contracts are being implemented as written.
- Review documentation, including, but not limited to, invoices, to ensure that USDA Food values are credit in full and in a timely manner.

[NOTE: For the FSMC to conduct procurement on behalf of the CE, the CE must indicate this procurement options in the TDA solicitation and contract prototype. If the CE does not indicate that the FSMC will conduct procurement on behalf of the CE in the TDA solicitation and contractor, the FSMC cannot conduct procurement for the CE. See *Administrator's Reference Manual (ARM)*, Section 18, *Food Service Contracts* for additional information on this topic.]

Contract Protests

The CE is responsibility to ensure that all contract protests are resolved. The CE and any entity acting on their behalf must follow the CE's written procedures¹⁴ to resolve protests. An interested party¹⁵ may protest any of the following situations:

- Solicitation or another request for offers for a contract for the procurement of property or services
- Cancellation of a solicitation or other request
- Award or proposed award of a contract
- Termination of a contract, if the protest alleges that the termination was based on improprieties in the administration of the contract.

The CE and any entity acting on their behalf must retain all documentation related to protests, and the CE must notify TDA when a protest is received.¹⁶

The USDA Food and Nutrition Service (FNS) will also accept protests related to solicitation from a protestor directly if the following conditions have been met:

- The contract was made in connection with the School Nutrition Program (SNP).
- The protestor has exhausted all administrative remedies with the CE and any entity acting on the CE's behalf (grantee and subgrantee) before pursuing the protest with FNS.
- Violations of federal law or regulations and the standards of this section exist.¹⁷

¹⁴ See *Administrator's Reference Manual (ARM)*, Section 17a, *Procurement Procedures* for additional information on this topic.

¹⁵ An *interested part* is defined as *any entity or person who may be affected by a situation, any entity or person who has a real or direct interest in action being proposed or taken*.

¹⁶ See the *Contract Information for the Texas Department of Agriculture (TDA)*, *Food and Nutrition*, which follows the table of contents for information on contracting TDA.

¹⁷ Violations of state or local law will be under the jurisdiction of state or local authorities.

- Violation of a CE's or entity acting on CE's behalf (grantee or subgrantee) protest procedures exists for failure to review a complaint or protest.

Protests received by FNS other than those specified above will be referred to the CE or the entity acting on behalf of the CE (grantee or subgrantee).

Additional Resources

TDA Resources

TDA resources are available on the SquareMeals website, www.SquareMeals.org.

- *Approved Purchase List*—Form designed to provide a list of products approved to purchase with information that will be helpful to menu planners and staff managing the contract.
- *Buy American Checklist for Non-Domestic Food Product Purchases*—Checklist to assist CEs in determining if a non-domestic product is acceptable.
- *Procurement Snapshot Tool*—Form designed to provide a summary of procurement activities for the program year or fiscal year.
- *Micro-Purchase Log*—Form designed to track purchases made under the micro-purchase method.
- *Informal Small Purchase Log*—Form designed to track offers and offerors for small purchase procurement.
- *Food Service Management Company (FSMC) Monitoring Form*—Form design to assist the CE in monitoring the FSMC's operation of the program.

Institute for Child Nutrition (ICN)

- *First Choice*, a handbook for developing an effective procurement process, available at www.theicn.org
- *Procurement in the 21st Century*, manual providing specific details on the procurement process, available at www.theicn.org
[NOTE: This resource is not a guidance document, but it does provide useful information.]
- *State Agency Guidance on Procurement*, a series of web-based training on procurement, available at www.theicn.org

Other Websites

- Texas Procurement and Support Services (TPASS) (Formerly Texas Building and Procurement Commission), available at www.window.state.tx.us/procurement/
- Comptroller of Public Accounts, available at www.cpa.state.tx.us
- Universal Public Purchasing Certification Council/National Institute of Government Purchasing (NIGP), available at www.nigp.org

Records Retention

The CE is required to maintain an organized accounting and financial system that includes documentation that demonstrates compliance with program regulations and the history of all financial transactions, including, but not limited to, procurement. Records retained for contract management must be sufficient to detail the history of financial transactions and to demonstrate that the CE manages all contracts and agreements as required.

These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request procurement documentation during both offsite and onsite administrative review processes as well as any additional review specific to procurement.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Third-Party Contracts

If a third-party contractor takes actions on behalf of the CE, the third-party must provide documentation to the CE that demonstrates the CE's compliance with all requirements.

Duplicative Services

The CE must retain records that demonstrate that it has not paid more than one contractor to provide the same products and/or services simultaneously.

The records retention guidance in this section is specific to contract management, but the CE will find the records retention guidance in all of the *Administrator's Reference Manual (ARM)*, sections that address financial issues to also be helpful.

Documentation that demonstrates compliance includes, but is not limited to, records that address the following issues.

- Additional purchases beyond the quantity expressed in the solicitation and contract
 - Explanation for why the costs of additional purchases are allowable
 - Rebid documentation
- Bond
 - Proof of bond
 - Notice to contractor to release bond
- Buy American
 - Product labeling that includes the county of origin for food products
 - Documentation of CE notification to contractors
 - Documentation of CE review of required elements when an exception is granted

Information Box 3

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

- Consultant Contract
 - Documentation demonstrating duration of contract, including contract renewals
 - Documentation of why a short-term or temporary consultant is needed
 - Explanation/expectation of consultant service timeline
- Cooperative Purchasing
 - Written agreement which includes, but is not limited to, membership and roles responsibilities, purchasing protocols, cost of services, timelines, and method for of providing credits, discounts, and rebates, and USDA Foods values.
 - Invoices demonstrating cost and repayment of fees if appropriate.
 - Documentation of payment for all credits, discounts, and rebates and USDA Food values.
- Credit, Discounts, and Rebates and USDA Food Values
 - Audit report results if an audit clause is included in solicitation and contract
 - Documentation of payment for all credits, discounts, and rebates and USDA Food values
- Duration of Contract
 - Proof of contract length and number of renewals
 - Rebid documentation
 - Documentation of payment for all credits, discounts, and rebates and USDA Food values
- Food Product Documentation
 - Documentation of food item country of origin, meal pattern contributions, and competitive food compliance
- Food Safety
 - Health inspection forms
 - Requests to health inspectors
 - HACCP plans and training documentation
- Invoicing and Payments
 - Documentation of payment for all credits, discounts, and rebates and USDA Food values
 - Invoice designation of allowable and unallowable costs
 - Cost indexes used to change the cost of a contract

- Modifications to the Contract
 - Cost indexes used to change the cost of contract
 - Descriptions and other documentation to support modification of products and/or services
- Other Regulatory Requirements
 - Record or copies of contracts demonstrating inclusion of statements for other regulatory requirements
- Ownership of Equipment or Software
 - Inventories, other records, or pictures demonstrating ownership
- Professional Certifications and Professional Development
 - Copies of certifications and training records
- Specifications, Technical Requirements, and Terms and Conditions
 - Invoices demonstrating products or services meet expectations.
 - Performance evaluations
 - Checks for accuracy of delivery invoices and billing invoices
 - Documentation indicating CE approval for actions taken to address shortages, substitutions, and delivery issues

Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with the procurement requirements. Additionally, TDA will assess compliance with the accounting and financial requirements based on the documentation that the CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes or other procurement review activities.

The cost for any products and/or services that were procured improperly are unallowable costs to the school nutrition program.¹⁸ This includes any costs that the CE has incurred as a result of intentionally breaking up purchases into smaller amounts to qualify under the micro-purchase threshold or simplified purchase threshold as well as purchases made on behalf of the CE by a third-party.

CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section.

¹⁸ An unallowable cost or expense cannot be paid using school nutrition program funds.

Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is \$25,000.

Fraud

Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of \$100 or more, be fined no more than \$25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds

If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will amend the FND Agreement to terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.