

# NEW BRAUNFELS INDEPENDENT SCHOOL DISTRICT

## STATE AND FEDERAL GRANTS FINANCIAL/ADMINISTRATIVEPROCEDURES MANUAL



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# INTRODUCTION

This manual sets forth the policies and procedures used by New Braunfels Independent School District (the “LEA”) to administer Federal funds for grants awarded after December 26, 2014. The manual contains the internal controls and grant management standards used by the LEA to ensure that all Federal funds are lawfully expended. It describes in detail the LEA’s financial management system, including cash management procedures, procurement policies; inventory management protocols; procedures for determining the allowability of expenditures; time and effort reporting; record retention; and sub-recipient monitoring responsibilities. New employees of the LEA, as well as incumbent employees, are expected to review this manual to gain familiarity and understanding of the LEA’s rules and practices.

Although this manual is not all-inclusive and cannot address all situations, it does provide general information to assist with standard financial operations and grants management. All LEA personnel with financial and administrative duties, and program-specific fiscal duties, are responsible for the contents.

## **A. Waste, Fraud, and Abuse**

To ensure the public receives the most value, the LEA strives to ensure the diligent administrative management of public funds is as effective and efficient as possible, with a high standard of accountability to prevent waste, fraud, and abuse.

All trustees, employees, vendors, contractors, consultants, volunteers, and any other parties who are involved in the LEA’s financial transactions shall act with integrity and diligence in duties involving the LEA’s financial resources.

### **1. Conflict of Interest**

No LEA employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal, state, or other award if he or she has a real or apparent conflict of interest. If required by the terms and agreements of a Grant Award Notice and/or the awarding agency, the LEA will disclose in writing any potential conflict of interest to the awarding agency in accordance with the awarding agency’s policies.

Please see page 66 for Conflict of Interest procedures, Purchasing Code of Ethics, and Definitions.

### **2. Fraud and Financial Impropriety**

The LEA prohibits fraud and financial impropriety, as defined below, in the actions of its trustees, employees, vendors, contractors, consultants, volunteers and others seeking or maintaining a business relationship with the LEA. These persons shall not seek a financial or other advantage, either personally or for the LEA, through bribery, fraud, kickbacks, misapplication of funds, malfeasance, gross mismanagement, or other criminal activities. These persons shall not offer, promise, give, request, agree to receive or accept a bribe for any purpose. Excessive or lavish gifts or hospitality in relation to business transactions or arrangements with granting agencies, contractors, vendors or other parties to contracts might constitute bribery.

Please see page 67 for a definition of nominal vs excessive gifts.

Fraud and financial impropriety includes, but is not limited to:

- Forgery or unauthorized alteration of any document or account belonging to the LEA;
- Forgery or unauthorized alteration of a check, bank draft, or any other financial document;
- Misappropriation of funds, securities, supplies, or other LEA assets, including employee time;
- Impropriety in the handling of money or reporting of LEA financial transactions;
- Profiteering as a result of insider knowledge of LEA information or activities;
- Unauthorized disclosure of confidential or proprietary information to outside parties;
- Unauthorized disclosure of investment activities engaged in or contemplated by the LEA;
- Accepting or seeking anything of material value from contractors, vendors, or other persons providing services or materials to the LEA;
- Destroying, removing, or inappropriately using records, furniture, fixtures, or equipment;
- Failure to provide financial records required by state and local entities;
- Failure to disclose conflicts of interest as required by policy; and
- Any other dishonest act regarding the finances of the LEA.

The LEA will take appropriate action to prevent incidents of fraud, malfeasance, misapplication of funds, gross mismanagement, or other criminal activities in all forms, which may be prosecutable. The LEA will disclose in writing to the awarding agency any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Please see page 68 for Mandatory Disclosure procedures.

### **3. Reporting Fraud or Financial Impropriety**

Any person who suspects fraud or financial impropriety, or suspects that an illegal or unethical act has occurred, shall report the suspicions immediately to any supervisor, the Superintendent or designee, the Board President, or local law enforcement. The LEA will not retaliate against any person who, in good faith, has reported what they believe to be illegal acts by LEA employees, officers, or agents, or of other individuals or entities with whom the LEA has a business relationship, on the basis of a reasonable belief that the practice is in violation of law or clear mandate of public policy.

A signed written statement shall be completed by the Complainant and should include the following information, if applicable or known: (1) Date of statement; (2) Type of funds, such as Federal, state, local; (3) Grant number; (4) Location of incident; (5) Date and time of incident; (6) Source of complaint (employee, vendor, etc.); (7) Description in detail of infraction; (8) Any other pertinent information.

### **4. Investigating Reports of Fraud or Financial Impropriety**

In coordination with legal counsel and other internal or external departments or agencies, as appropriate, the Superintendent, Board President, or a designee shall promptly investigate reports of potential fraud or financial impropriety.

If an investigation substantiates a report of fraud or financial impropriety, the Superintendent or designee shall promptly inform the Board of the report, the investigation, and any responsive action taken or recommended by the administration.

If an employee is found to have committed fraud or financial impropriety, the Superintendent or designee shall take or recommend appropriate disciplinary action, which may include termination of employment. If a contractor or vendor is found to have committed fraud or financial impropriety, the District shall take appropriate action, which may include cancellation of the District's relationship with the contractor or vendor.

When circumstances warrant, the Board, Superintendent, or designee may refer matters to appropriate law enforcement or regulatory authorities. In cases involving monetary loss to the District, the District may seek to recover lost or misappropriated funds.

The final disposition of the matter and any decision to file a criminal complaint or to refer the matter to the appropriate law enforcement or regulatory agency for independent investigation shall be made in consultation with legal counsel.

## **B. Organizational Information**

Organizational charts are available at [www.nbisd.org](http://www.nbisd.org)

For assistance with business operations, please contact any of the staff members listed on the Business Office website at [www.nbisd.org](http://www.nbisd.org)

## **I. FINANCIAL MANAGEMENT SYSTEM**

The LEA maintains a proper financial management system for the proper accounting of taxpayer money. In order to receive both direct and state-administered grants, and to expend funds associated with a grant award, certain fiscal controls and procedures must be in place to ensure that all financial management system requirements are met. Failure to meet a requirement may result in return of funds or termination of the award.

### **A. Financial Management Standards 2 CFR §200.302**

The standards for financial management systems are found at 2 CFR §200.302. The required standards include:

#### **1. Identification 2 CFR §200.302(b)(1)**

The LEA must identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and, if applicable, name of the pass-through entity.

#### **2. Financial Reporting 2 CFR §200.302(b)(2)**

Accurate, current, and complete disclosure of the financial results of each Federal award or programs must be made in accordance with the financial reporting requirements set forth in the Education Department General Administrative Regulations (EDGAR), specifically 2 CFR §§200.327 Financial Reporting and 200.328 Monitoring and Reporting Program Performance.

Please see page 12 for these financial reporting procedures.

#### **3. Accounting Records 2 CFR §200.302(b)(3)**

The LEA must maintain records which adequately identify the source and application of funds provided for Federally-assisted activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

Please see page 21 for accounting records procedures and page 87 for records management procedures.

#### **4. Internal Controls 2 CFR §§200.302(b)(4); 200.303**

Effective control and accountability must be maintained for all funds, real and personal property, and other assets. The LEA must adequately safeguard all such property/assets and must assure that they are used solely for authorized purposes.

“Internal controls” are tools to help program and financial managers achieve results and safeguard the integrity of their program.

The LEA must establish and maintain effective internal controls over the Federal award that provides reasonable assurance that the following objectives are achieved:

- Effectiveness and efficiency of operations;
- Adequate safeguarding of property;
- Assurance property and money is spent in accordance with grant program and to further the selected objectives; and
- Compliance with applicable laws and regulations, and the terms and conditions of the awards.

The United States General Accounting Office (GAO) identifies five components of internal controls:

a. Control Environment

A strong control environment allows management and employees to maintain a positive and supportive attitude toward internal controls and conscientious management, such as the codes of conduct for ethical and moral behavioral standards, commitment to competence, appropriate managerial attitudes toward financial, budgetary, and operational and programmatic operations, an organizational structure that clearly defines key areas of authority and responsibility and establishes appropriate lines of reporting, robust human resources policies and practices, and a good relationship with oversight agencies.

b. Risk Assessment

To establish clear and consistent entity objectives and to determine internal and external risks, such as changes in the operating environment, new personnel, new or enhanced information systems, rapid growth, new technology, and new programs or activities.

c. Control Activities

To help ensure that management’s directives are carried out and that actions are taken to address risks, such as maintaining physical control over valuable assets, segregating key responsibilities among different people, maintaining appropriate documentation, implementing clear written policies in key areas, and restricting access to systems and records.

d. Information and Communication

To ensure that personnel receive relevant, reliable, and timely information that enables them to carry out their responsibilities. Procedures should be developed for identifying pertinent information and distributing it in a form and time frame that permits personnel to perform their duties efficiently.

e. Monitoring

To assess the quality of internal control performance over time and ensure that any findings are promptly resolved. Monitoring should occur on an ongoing basis in the course of normal operations and can include actions such as regular oversight by supervisors, reconciliations, and formal program reviews or audits. Monitoring systems should include policies and procedures for correcting any findings in a timely manner.

**5. Budget Control 2 CFR §200.302(b)(5)**

Actual expenditures or outlays must be compared with budgeted amounts for each federal award.

Please see page 16 for budget control procedures.

**6. Cash Management 2 CFR §§200.302(b)(6); 200.305**

The LEA must maintain written procedures to implement the cash management requirements found in EDGAR.

Please see page 36 for these cash management procedures.

**7. Allowable Costs 2 CFR §§200.302(b)(7); Subpart E - Cost Principles**

The LEA must maintain written procedures for determining the allowability of costs in accordance with EDGAR, and the terms and conditions of the Federal award.

Please see page 23 for these allowability procedures.

**B. Overview of the Financial Management/Accounting System**

New Braunfels ISD's financial system is iTCCS. This system has a Purchasing module which interfaces with its Finance module. The LEA contracts with an outside source for fixed asset inventory tracking. This contractor conducts an annual inventory, which is reconciled to the ITCCS Finance module. Federal and state grant budgets are loaded into ITCCS by Business Office personnel at either the time of stamp in date or upon notification of grant award. The General Service Fund, Debt Fund, and Child Nutrition budgets are loaded into ITCCS after the budget is adopted by the School Board in June. All budgets are tracked by a TEA assigned fund number as outlined in the FASRG. Business Office personnel are responsible for managing budgets and accounts payable. Under 2 C.F.R. 200.302, a recipient must track the CFDA title and number, Federal award identification number and year, name of the Federal agency, and, if applicable, name of the pass-through entity of Federal and state grants.

The Accounting & Budget Analyst will be responsible for compiling timely and accurate financial reports, subject to review and approval by the Coordinator of Financial Services. The reports are prepared and submitted as specified by the financial reporting clause of each grant or contract award document. These reports include monthly and cumulative expenditures, project budgets, and a balance remaining column.

The LEA's financial management system provides for accurate, current, and complete disclosure of the financial results of each grant project. The system adequately identifies the funding source and use of funds and contains information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays (expenditures) and income. The financial accounting system accommodates the minimum 15-digit account code mandated by FASRG, can generate information needed for PEIMS (Public Education Information Management System) reporting, and ensures adequate accountability of State and Federal funds.

## **1. General Ledger**

The LEA's detailed general ledger includes, at minimum, the following information for recorded transactions:

- Reference number (such as check number, purchase order number, or journal voucher number)
- Transaction date
- Vendor's name
- Brief description of the transaction
- General ledger account code
- Amount encumbered or obligated
- Amount paid and/or encumbered

Additionally, for each account code used to account for Federal grant expenditures, the detailed ledger may include, respective of each grant program:

- Budgeted expenditures
- Encumbrances
- Actual expenditures

The LEA's payroll reports include, at a minimum, the following information:

- Employee's first and last name;
- Employee's identification number;
- Gross salary and other income;
- Deductions;
- Net earnings; and
- For employees paid with Federal or State grant funds: the percentage paid out of each grant fund and, if applicable, the percentage paid out of other funding sources.

For each pay period, the payroll reports will also include the check date, check number, and fund code to which the payroll costs were charged.

## **C. Budgeting**

### **1. Budgeting for All Estimated Revenue and Proposed Expenditures According to Texas Education Code Chapter 44 Fiscal Management**

a. Fiscal Year

According to TEC 44.0011, the fiscal year of the LEA begins on July 1 or September 1 of each year, as determined by the Board of Trustees of the district.

This LEA's fiscal year begins on July 1 and ends on June 30.

b. Preparation of Budget

According to TEC 44.002, on or before a date set by the State Board of Education, the Superintendent shall prepare, or cause to be prepared, a proposed budget covering all estimated revenue and proposed expenditures of the LEA for the following fiscal year. The budget must be prepared according to generally accepted accounting principles; rules adopted by the State Board of Education, and adopted policies of the Board of Trustees.

The CFO will ensure the budget is prepared in accordance with GAAP (generally accepted accounting principles) and State guidelines. The CFO will develop a budget calendar of critical dates for budget development, submission, and review.

According to the TEA 2010 Financial Accountability System Resource Guide (FASRG), Budgeting Module, inclusion of budgets for local, State, and Federal grant programs is not required for an LEA's officially adopted annual budget; however, budget information for grant programs may be included as a supplement to the official budget. If the LEA has a policy that requires the approval of grant budgets by the school board, the level of detail at which they are approved is left to the discretion of the local school board. However, the authority to approve a budget or budget amendment for a grant program lies with the granting agency and not with the school board.

The LEA does not require that grant program budget information be included as a supplement to the LEA's officially adopted annual budget. The LEA does not require board approval for grant budgets or amendments.

c. Records and Reports

According to TEC 44.003, the Superintendent shall ensure that records are kept and that copies of all budgets, all forms, and all other reports are filed on behalf of the LEA at the proper times and in the proper offices as required by this code.

Please see page 87 for records retention procedures.

d. Notice of Budget and Tax Rate Meeting; Budget Adoption

According to TEC 44.004, when the budget has been prepared under TEC 44.002, the president shall call a meeting of the Board of Trustees for the purpose of adopting a budget for the succeeding fiscal year. The president shall provide for the publication of notice of the budget and proposed tax rate meeting according to the standards of TEC 44.004, accessed at <http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.44.htm>.

The LEA publishes these notices in a weekly local newspaper.

The Board of Trustees, at the meeting called for that purpose, shall adopt a budget to cover all expenditures for the LEA for the next succeeding fiscal year. Any taxpayer of the district may be present and participate in the meeting. The budget must be adopted before the adoption of the tax rate for the tax year in which the fiscal year covered by the budget begins.

The LEA complies with TEC 44.004 for requirements regarding tax rates and certified estimates of taxable value, if applicable.

e. Publication of Summary of Proposed Budget

According to TEC 44.0041, concurrently with the publication of notice of the budget under TEC 44.004, the LEA posts a summary of the proposed budget on the LEA's Internet website. The budget summary includes: (1) information relating to per student and aggregate spending on (a) instruction; (b) instructional support; (c) central administration; (d) district operations; (e) debt service; and (f) any other category designated by the commissioner; and (2) a comparison to the previous year's actual spending.

f. Filing of Adopted Budget

According to TEC 44.005, on or before a date set by the State Board of Education, the budget must be filed with TEA according to the rules established by the State Board of Education.

g. Posting of Adopted Budget

According to TEC 39.084, on final approval of the budget by the Board of Trustees, the LEA will post on the LEA's Internet website a copy of the budget adopted by the Board of Trustees. The LEA's Internet website must prominently display the electronic link to the adopted budget. The LEA will maintain the adopted budget on the LEA's Internet website until the third anniversary of the date the budget was adopted.

h. Effect of Adopted Budget: Amendments

According to TEC 44.006, public funds of the LEA may not be spent in any manner other than as provided for in the budget adopted by the Board of Trustees, but the board may amend a budget or adopt a supplementary emergency budget to cover necessary unforeseen expenses. Any amendment or supplementary budget must be prepared and filed according to rules adopted by the State Board of Education.

According to the FASRG Module 2 Budgeting, budget amendments are mandated by the State for budgeted funds reallocated from one function level to another and from one state and/or federal project to another. These budget changes are usually the result of unexpected levels of expenditures in certain categories and must be amended in the budget for legal compliance. Other budget amendments are determined by the school board.

All budget amendments are required to be adopted by the last day of the fiscal year.

Based upon the level of detail at which the budget is adopted, budget revisions may or may not be required for reallocations within functional levels or programs. All necessary budget amendments (except for federal funds) must be formally adopted by the school board and recorded in the board minutes.

To provide an adequate audit trail for budget amendments, a budget amendment report by Fund and Function will be presented to the Board and will include:

- The original budget amount by fund and function;
- The amount of the amendment by fund and function; and
- The amended budget amount by fund and function.

Major program or budget changes are reviewed by the Business Office and Program Administrators to ensure the LEA's legal compliance with state expenditure mandates.

The CFO will approve and Accounting & Budget Analyst will record budget transfers on a timely basis.

Budget transfers and amendments are processed through ITCCS.

## **2. Budgeting for Federal and State Grants**

### **a. The Planning Phase: Meetings and Discussions**

#### **i. Planning**

Planning occurs before the LEA receives the GAN/NOGA. Planning meetings may include parents, teachers, administrators and community members.

The Program Administrator, Business Office and Superintendent's designee are responsible for coordinating the activities in this section. The majority of these planning activities occur during the spring and adjustments are made throughout the year.

Grant programs are unique and have different program and fiscal requirements. The unique character of grant funds results from both the difference in authority over grant funds and their restriction to specific purposes. Therefore, specific program budgets are prepared for each grant. The grant budget is based on how the grant funds can best aid in the implementation of the program plan. The LEA will take into consideration the legal consequences that may affect how grant funds can be used.

If program requirements stipulate a category or element that must be tracked, but is not identifiable from TEA's mandatory account code structure, the LEA will designate a local code to track such an expenditure.

Please see page 21 for a description of specific expenditures that require local option codes.

The following sources are used to develop budgets for federal grants:

- Historical data based on previous grant year actual budget;
- Campus Improvement Plan (CIP);
- Needs Assessments;
- District Improvement Plan (DIP);
- Staffing Needs;
- Grant Requirements;
- Carryover Funds, if applicable.

If the grant program has a “Supplement, Not Supplant” requirement, the entire funding picture for the program is examined to ensure that grant funds are not being used to supplant state, local, or other Federal funds, as applicable. The Program Administrator is responsible for ensuring the “Supplement, Not Supplant” requirements are not violated.

## ii. Reviewing and Approving the Budget

Prior to a grant’s submission, the Program Administrator and Assistant Superintendent will review the items in the budget to ensure allowability. See Section titled “Helpful Questions for Determining Whether a Cost is Allowable” for a guidance on allowability. If it is determined that a cost is not allowable, then the relevant staff member will notify the requestor and alert them to make necessary changes and resubmit the request for approval/denial.

Once the staff referenced above determines that all budgeted items are allowable, and upon receipt of approved GAN or submission of the Standard Application, the budget is sent to the Business Office, where it is loaded into ITCCS.

See the discussion starting on page 24 on performing allowability determinations.

Responsibilities for grants submitted via TEA’s eGrants applications:

- Budgeting projections are performed by the Program Administrator.
- The Program Administrator compiles data, using a spreadsheet, to ensure budgeted amounts match allocations.
- The Program Administrator ensures obligations or expenditures are not incurred prior to submittal of the eGrants application.

## b. Submitting the Grant Application for Federal and State Awards

The LEA will submit grant applications to TEA by the due date set by TEA. According to TEA Fiscal Guidelines, eGrants applications must be certified and submitted by an individual who has been authorized by the applicant or grantee organization to enter the organization into a legally binding contractual agreement. The “Authorized Official” is the individual who will represent the applicant or grantee in the event any legal disputes arises. For LEAs, this person is usually the Superintendent or designee.

The Program Administrator completes the grant application. The Superintendent’s designee reviews, certifies, and submits the grant application.

- Data entry into the eGrants application is performed by Federal program staff.
- The Program Administrators ensure that the LEA meets TEA's deadlines for submittal of grant applications and amendments.
- Federal program staff certify and submit the completed eGrants application.

i. Program Specific: IDEA-B

Prior to submitting the grant application for IDEA-B funds, the LEA performs an initial Excess Cost calculation and performs Maintenance of Effort (MOE) analysis to determine expenditure and budget data required for determination of compliance with the MOE Eligibility Standard. The Special Education Director and CFO perform the Excess Cost calculation and MOE analysis in the spring prior to submitting the grant application. Documentation is kept in the Business Office.

See pages 35 & 36 for information on performing the final Excess Cost calculation with actual, audited data and information on monitoring and analyzing compliance with MOE.

ii. Program Specific: ESSA

Prior to submitting the grant application for ESSA, the LEA performs an analysis of the SES status of each campus to determine expenditure and budget preparation and compliance. The Assistant Superintendent and the Program Administrator will be responsible for ensuring that all eligible schools receive funding (40% FRL for Title I Schoolwide and 75% FRL for Title I required to serve).

In accordance with policy EHBH Local, the District ensures equivalence among schools in teachers, administrators and other staff.

In accordance with policy EHBD Local, the District ensures equivalence among schools in the provision of curriculum materials and instructional supplies.

c. After Receiving the GAN/NOGA for Federal and State Programs Award

If the GAN/NOGA is for a different amount than initially budgeted, the Program Administrator, Accounting/Budget Analyst and Assistant Superintendent will meet to review these changes. If major budget changes are required, additional input will be requested from other key district personnel.

When the NOGA is received, the Program Administrator will compare the approved NOGA with the grant application to identify any budget revisions TEA may have required before issuing the approval.

The Program Administrator ensures obligations or expenditures are not incurred prior to the effective date, based on the period of obligation established in EDGAR and based on the effective date of the NOGA.

Throughout the grant period, the budget is used as a control measure. The budget is monitored by the Program Administrator as expenditures are incurred.

The Program Administrator ensures expenditures with grant funds are for allowable costs as approved in the grant application and are used for the intended beneficiaries and program.

d. Amending the Budget for Federal and State Programs

Budget amendments are requested before expenditures that exceed acceptable limits are incurred, to ensure that the grant remains in compliance with the granting agency's guidelines. In addition, expenditures requiring a budget amendment generally are not allowable if the obligation is incurred before the approval of the amendment. Expenditure monitoring is performed by the Program Administrator throughout the grant period as a control measure.

The process for amending the budget involves the Assistant Superintendent, Program Administrator and campus personnel, when applicable. When an amendment is needed to transfer currently budgeted funds, a Budget Amendment is processed via the Finance module in ITCCS. These amendments must include a justification in the Notes section. When an amendment is needed to increase/decrease currently budgeted funds due to carryover or maximum entitlement funds, an email is sent to the Accounting/Budget Analyst which outlines justification for the increase/decrease, along with appropriate documentation, such as a spreadsheet, GAN/NOGA and revised grant application.

The LEA follows the TEA guidelines for submitting Federal and state grant amendments. The Program Administrator monitors the deadlines for each grant to ensure amendments are submitted in a timely manner.

LEA personnel will refer to TEA's "When to Amend the Application" chart for guidance on when to amend a grant application, dependent on type of grant, based on scenarios in the chart. The chart can be accessed at: [http://tea.texas.gov/Finance\\_and\\_Grants/Administering\\_a\\_Grant.aspx](http://tea.texas.gov/Finance_and_Grants/Administering_a_Grant.aspx)

Examples taken from the chart:

- For a Federally-funded formula grant, a TEA amendment is NOT required to:
  - Increase or decrease the amount of funds currently approved in a class/object code on the Program Budget Summary by 25% or less of the total budgeted amount, as long as a new line item is not being added. (Exception: Coordinated Early Intervening Services (CEIS) in the Special Education Consolidated grant application always requires an amendment.)
  - Increase or decrease the amount of funds budgeted for a line item on any supporting budget schedule (i.e., within a class/object code) as long as the description of the line item does not change and as long as the current amount approved in that class/object code is not changed by more than 25% of the total budgeted amount. (Exception: Coordinated Early Intervening Services (CEIS) in the Special Education Consolidated grant application always requires an amendment.)
  - Increase the salary amount of funds budgeted for a line item (i.e., a position type.)

- Increase or decrease the number of positions previously approved by 20% or less, as long as a new position type is not being added.
- For a Federally-funded formula grant, a TEA amendment IS required to:
  - Add a class/object code not previously budgeted.
  - Increase or decrease the amount of funds currently approved in a class/object on the Program Budget Summary by more than 25% of the total budgeted amount.
  - Add a new line item on any of the supporting budget schedules.
  - Increase or decrease the number of positions approved by more than 20%.
  - Add a type of position not initially approved.
  - Add a new item or increase the quantity of capital outlay items approved for articles costing \$5,000 or more.
  - Add a new item of capital outlay for articles costing less than \$5,000.

e. Budget Control for Federal and State Programs

The Program Administrator is responsible for performing cost reconciliation on a semi-annual basis (or monthly basis when required) for Federally funded positions of employees working on multiple cost objectives. Adjustments will be performed annually if the difference between actual and budgeted is less than ten percent. Adjustments will be performed semi-annually if the difference between actual and budgeted is ten percent or greater.

The Business Office will monitor cash flow statements and fund balances and will perform bank reconciliations on a monthly basis.

The Program Administrator will monitor expenditures, and obligated and encumbered balances of Federal funds, on a monthly basis, to ensure purchases benefit the beneficiaries during the grant program and to guard against high carryover amounts.

The following special allotments from the Foundation School Program (FSP) are monitored quarterly by the Program Administrator and Business Office to ensure indirect costs do not exceed the maximum amounts established in Texas Administrative Code (TAC) 105.11: Gifted and Talented, Career and Technology, Special Education, Bilingual Education, and Compensatory Education.

The Program Administrator evaluates the budget for its effectiveness in attaining goals and objectives. Evaluation may involve an examination of how funds were expended, what outcomes resulted from the expenditure of funds, and to what degree these outcomes achieved the objectives stated during the planning phase. This evaluation phase is important in determining the following year's budgetary allocations.

## **D. Accounting Records**

### **1. Accounting System According to Texas Education Code Chapter 44 Fiscal Management**

#### **a. Accounting System**

According to TEC 44.007, a standard school fiscal accounting system must be adopted and installed by the Board of Trustees of each LEA. The accounting system must conform with generally accepted accounting principles. The accounting system must meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor.

#### **b. Records and Reports**

According to TEC 44.007, a record must be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year shall be filed with the agency on or before the date set by the State Board of Education, and according to the requirements of the State Board of Education.

The Business Office is responsible for maintaining accounting records, subject to review and approval by the CFO.

Please see page 87 for records retention procedures.

### **2. Accounting Code Structure**

The proper coding of the budget and classification of expenditures is critical for the accurate oversight of the LEA's budget. The LEA uses the accounting code structure described in the TEA Financial Accountability System Resource Guide (FASRG). The following elements are included in the accounting code structure, in this sequence: (a) A mandatory three-digit Fund Code; (b) A mandatory two-digit Function Code; (c) A mandatory four-digit Object Code; (d) An optional two-digit code to provide special accountability at the local level; (e) A mandatory three-digit Organization Code; (f) A mandatory single-digit Fiscal Year Code; (g) A two-digit Program Intent Code; (h) An optional single-digit code that is used at the local level; (i) An optional two-digit code that is used at the local level to further describe the transaction.

The TEA Financial Accountability System Resource Guide (FASRG) provides the framework for the accounting system and account coding structure. The LEA has prepared a Budget Code Structure and Accounting Code Overview to assist campuses/departments in account coding. A link to the FASRG has also been provided on the LEA website for reference.

#### **a. Local Option Codes**

##### **i. IDEA-B**

For the Federal IDEA-B grant, local option codes are established to ensure proper monitoring and tracking of IDEA-B funds used for proportionate share for equitable services to parentally-

placed private school children with disabilities [Note: proportionate share is not applicable to charter schools or any ISDs that do not have private schools, including home schools, in their jurisdiction], the 25% set-aside for residential placement, if using IDEA-B funds for the set-aside, and for Coordinated Early Intervening Services (CEIS), if applicable.

To ensure proper monitoring and tracking of Federal funds with identical Fund Codes, local option codes will be utilized.

For State funds, local option codes are established to ensure state compensatory education (SCE) funds and any other funding necessary to sufficiently support the cost of additional accelerated instruction for students who fail to perform satisfactorily on an end-of-course (EOC) assessment instruction according to TEC 28.0217, can be tracked and monitored.

### **3. Accounting Records**

The LEA must maintain records which adequately identify the source and application of funds provided for Federally-assisted activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation. Payroll and accounts payable records are kept according to the Texas State Records Retention Schedule. Previous years' payroll and accounts payable records are stored in paper form in the District warehouse according to the Texas State Records Retention Schedule. All other accounting records are kept in accordance with the Texas State Records Retention Schedule.

### **4. Accounting Controls**

The Business Office utilizes a year-end audit preparation checklist to ensure year-end balances are reflected correctly.

The CFO reviews financial statements for accuracy on a monthly basis.

The CFO evaluates the internal accounting system and its report writing capabilities in order to conform internal reports to the formats required for year-end.

The CFO ensures the annual inventory of capital assets is reconciled with the subsidiary ledger or general ledger.

The CFO ensures the Form SF-SAC Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations is filed by the deadline for each fiscal year.

## **E. Spending Grant Funds**

### **1. Direct and Indirect Costs**

While developing and reviewing the grant budget, the Program Administrators should keep in mind the difference between direct costs and indirect costs.

a. Determining Whether a Cost is Direct or Indirect

Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. 2 CFR §200.413(a). Indirect costs are those that have been incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. 2 CFR §200.56. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs. 2 CFR §200.413(a).

Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. 2 CFR §200.413(b). The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

- Administrative or clerical services are integral to a project or activity;
- Individuals involved can be specifically identified with the project or activity;
- Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and
- The costs are not also recovered as indirect costs. 2 CFR §200.413(c).

b. Indirect Cost Rate

The LEA prepares annually the ICRP as directed by the TEA.

c. Applying the Indirect Cost Rate

Once the LEA has an approved indirect cost rate, the percentage is multiplied against the actual direct costs (excluding distorting items such as equipment, contracts in excess of \$25,000, pass-through funds, etc.) incurred under a particular grant to produce the dollar amount of indirect costs allowable to that award. 34 C.F.R § 75.564; 34 CFR §76.569. Once the LEA applies the approved rate, the funds that may be claimed for indirect costs have no Federal accountability and may be used as if they were non-Federal funds. For Direct Grants, reimbursement of indirect costs is subject to the availability of funds and statutory or administrative restrictions 34 CFR §75.564.

Where a Federal program has a specific cap on the percentage of administrative costs that may be charged to a grant, that cap must include all direct administrative charges as well as any recovered indirect charges.

## **2. Determining Allowability of Costs: Subpart E – Cost Principles**

Expenditures must be aligned with approved budgeted items. Certain changes or variations from the state-approved budget and grant application need prior approval from the state, according to TEA's

guidance on “When to Amend the Application” accessed at:  
[http://tea.texas.gov/Finance\\_and\\_Grants/Administering\\_a\\_Grant.aspx](http://tea.texas.gov/Finance_and_Grants/Administering_a_Grant.aspx)

Please see page 19 for procedures for amending the budget and grant application.

When determining how the LEA will spend its grant funds, the respective Program and/or Campus Administrator will review the cost to determine whether it is an allowable use of Federal grant funds:

- Before submitting their grant application.
- Before obligating and spending those funds on the proposed good or service.
- After the cost item is purchased and received, to ensure it is being used for its intended purpose (this includes ensuring that the personnel who will use the cost item are aware of its fund source and intended purpose, as applicable; labeling the equipment with its fund source, if applicable).

Except where otherwise authorized by statute, all costs supported by Federal education funds must meet the standards outlined in EDGAR, 2 CFR Part 3474 and 2 CFR Part 200, as well as program-specific requirements and State and local rules.

Part 200’s cost guidelines must be considered when Federal grant funds are expended. Federal rules require state- and local-level requirements and policies regarding expenditures to be followed as well. When differing regulations and rules conflict, the most restrictive rule is followed. For example, state and/or local policies relating to travel or equipment may be narrower than the Federal rules and therefore, the stricter State and/or local policies must be followed. Further, certain types of incentives are allowable under Federal law, but are not allowable under State law.

In order for a cost to be allowable, the expenditure must also be allowable under the applicable program statute (e.g., Title I of the Elementary and Secondary Education Act (ESSA), or the Carl D. Perkins Career and Technical Education Act (Perkins), or IDEA-B), along with accompanying program regulations, non-regulatory guidance and grant award notifications.

This manual includes sections on “Basic Considerations”, “General Provisions for Selected Items of Cost”, and “Questions to Consider When Determining Allowability of Cost with Federal Funds.” Fiscal and program staff should refer to these sections to ensure purchases are allowable with Federal funds.

a. Basic Considerations 2 CFR §§200.403-406

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- i. Be Necessary and Reasonable for the performance of the Federal award. 2 CFR §200.403(a). LEA staff must consider the following elements when determining the reasonableness of a cost. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. 2 CFR §200.404. For example, reasonable means that sound business practices were followed, and purchases were comparable to market prices.

When determining reasonableness of a cost, consideration must be given to:

- Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the LEA or the proper and efficient performance of the Federal award. 2 CFR §200.404(a)
- The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, and other laws and regulations; and terms and conditions of the Federal award. 2 CFR §200.404(a)
- Market prices for comparable goods or services for the geographic area. 2 CFR §200.404(c)
- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the LEA, its employees, its students, the public at large, and the Federal government. 2 CFR §200.404(d)
- Whether the LEA significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost. 2 CFR §200.404(e)

While 2 CFR §200.404 does not provide specific descriptions of what satisfies the "necessary" element beyond its inclusion in the reasonableness analysis above, necessary is determined based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. A key aspect in determining whether a cost is necessary is whether the LEA can demonstrate that the cost addresses an existing need, and can prove it. For example, the LEA may deem a language skills software program necessary for a limited English proficiency program.

When determining whether a cost is necessary, consideration may be given to:

- Whether the cost is needed for the proper and efficient performance of the grant program
- Whether the cost is identified in the approved budget or application
- Whether there is an educational benefit associated with the cost
- Whether the cost aligns with identified needs based on results and findings from a needs assessment
- Whether the cost addresses program goals and objectives and is based on program data.

- ii. Be allocable to the Federal award. 2 CFR §200.403(a). A cost is allocable to the Federal award if the goods or services involved are chargeable or assignable to that Federal award in accordance with the relative benefits received. 2 CFR §200.405(a). This means that the Federal grant program derived a benefit in proportion to the funds charged to the program. For example, if 50% of a teacher's salary is paid with grant funds, then that teacher must spend at least 50% of his or her time on that grant program.

The allocable standard is met if the cost:

- Is incurred specifically for the Federal award
- Benefits both the Federal award and other work of the LEA and can be distributed in proportions that may be approximated using reasonable methods; and
- Is necessary to the overall operation of the LEA and is assignable in part to the Federal award in accordance with the principles in 2 CFR §200.405.

If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. 2 CFR §200.405 (d).

- iii. Conform to any limitations or exclusions set forth as cost principles in Part 200 or in the terms and conditions of the Federal award, as to types or amount of cost items. 2 CFR §200.403(b).
- iv. Be consistent with policies and procedures that apply uniformly to both Federally- financed and other activities of the LEA. 2 CFR §200.403(c).
- v. Be accorded consistent treatment. A cost cannot be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost. 2 CFR §200.403(d).
- vi. Be determined in accordance with generally accepted accounting principles (GAAP), unless provided otherwise in Part 200. 2 CFR §200.403(e).
- vii. Not be included as a match or cost-share, unless the specific Federal program authorizes Federal costs to be treated as such. 2 CFR §200.403(f). Some Federal program statutes require the non-Federal entity to contribute a certain amount of non-Federal resources to be eligible for the Federal program.
- viii. Be adequately documented. 2 CFR §200.403(g). All expenditures must be properly documented.
- ix. Be the net of all applicable credits. The term “applicable credits” refers to those receipts or reduction-of expenditure-type transactions that operate to offset or reduce expense items allocable to the Federal award.

Typical examples of such transactions are:

- Purchase discounts;
- Rebates or allowances;
- Recoveries or indemnities on losses; insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the LEA relate to allowable costs for the Federal award, they shall be credited to the Federal award, either as a cost reduction or a cash refund, as appropriate. 2 CFR §200.406.

b. General Provisions for Selected Items of Cost 2 CFR §§200.420-200.475

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the Basic Considerations listed above. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or

unallowable; rather, determination as to allowability in each case of a cost item not listed should be based on the treatment provided for similar or related items of cost, and based on the cost principles described in EDGAR. In the case of a discrepancy between the provisions of a specific Federal grant program and the provisions listed below, the specific Federal grant program's provisions govern.

Fifty-five specific cost items from 2 CFR §§200.420-200.475 are listed in the chart below, along with the citation where it is discussed whether the item is allowable. Please do not assume that an item is allowable because it is listed in the chart, as it may be unallowable despite its inclusion in the selected items of cost section. The expenditure may be unallowable for a number of reasons, including: the express language of the regulation states the item is unallowable; the terms and conditions of a specific grant program deem the item unallowable; or State/local restrictions dictate that the item is unallowable. The item may also be unallowable because it does not meet one of the cost principles, such as being reasonable because it is considered too expensive. If an item is unallowable for any of these reasons, Federal funds cannot be used to purchase it.

The selected item of cost addressed in Part 200 includes the following (in alphabetical order):

<b>Item of Cost</b>	<b>Citation of Allowability Rule</b>
Advertising and public relations	2 CFR §200.421
Advisory councils	2 CFR §200.422
Alcoholic beverages	2 CFR §200.423
Alumni/ae activities	2 CFR §200.424
Audit services	2 CFR §200.425
Bad debts	2 CFR §200.426
Bonding costs	2 CFR §200.427
Collections of improper payments	2 CFR §200.428
Commencement and convocation costs	2 CFR §200.429
Compensation – personal services	2 CFR §200.430
Compensation – fringe benefits	2 CFR §200.431
Conferences	2 CFR §200.432
Contingency provisions	2 CFR §200.433
Contributions and donations	2 CFR §200.434
Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements	2 CFR §200.435
Depreciation	2 CFR §200.436
Employee health and welfare costs	2 CFR §200.437
Entertainment costs	2 CFR §200.438
Equipment and other capital expenditures	2 CFR §200.439
Exchange rates	2 CFR §200.440
Fines, penalties, damages and other settlements	2 CFR §200.441
Fund raising and investment management costs	2 CFR §200.442
Gains and losses on disposition of depreciable assets	2 CFR §200.443
General costs of government	2 CFR §200.444
Goods and services for personal use	2 CFR §200.445
Idle facilities and idle capacity	2 CFR §200.446
Insurance and indemnification	2 CFR §200.447

Intellectual property	2 CFR §200.448
Interest	2 CFR §200.449
Lobbying	2 CFR §200.450
Losses on other awards or contracts	2 CFR §200.451
Maintenance and repair costs	2 CFR §200.452
Materials and supplies costs, including costs of computing devices	2 CFR §200.453
Memberships, subscriptions, and professional activity costs	2 CFR §200.454
Organization costs	2 CFR §200.455
Participant support costs	2 CFR §200.456
Plant and security costs	2 CFR §200.457
Pre-award costs	2 CFR §200.458
Professional service costs	2 CFR §200.459
Proposal costs	2 CFR §200.460
Publication and printing costs	2 CFR §200.461
Rearrangement and reconversion costs	2 CFR §200.462
Recruiting costs	2 CFR §200.463
Relocation costs of employees	2 CFR §200.464
Rental costs of real property and equipment	2 CFR §200.465
Scholarships and student aid costs	2 CFR §200.466
Selling and marketing costs	2 CFR §200.467
Specialized service facilities	2 CFR §200.468
Student activity costs	2 CFR §200.469
Taxes (including Value Added Tax)	2 CFR §200.470
Termination costs	2 CFR §200.471
Training and education costs	2 CFR §200.472
Transportation costs	2 CFR §200.473
Travel costs	2 CFR §200.474
Trustees	2 CFR §200.475

State rules on procurement and travel are more restrictive than Federal rules. Please refer to the procurement and travel sections of this manual.

In addition to reviewing the “Basic Considerations” and “General Provisions for Selected Items of Cost” sections above, fiscal and program staff should reference “Questions to Consider When Determining Allowability of Cost with Federal Funds” on page 92, when making allowability determinations.

#### c. Travel Costs

##### i. Federal Allowability Rules for Travel Costs:

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of a grant recipient. Federal rules allow such costs to be charged on an actual cost basis, on a per diem or mileage basis in

lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the recipient's non-Federally funded activities and in accordance with the recipient's written travel reimbursement procedures. 2 C.F.R §200.474(a). However, a per diem basis in lieu of actual costs is not allowable according to the more restrictive State rules.

Travel costs incurred by employees and officers must be considered reasonable and otherwise allowable to the extent such costs do not exceed charges normally allowed by the LEA in its regular operations as the result of its written travel procedures. In addition, if these costs are charged directly to the Federal award, documentation must be maintained that justifies that (1) participation of the individual is necessary to the Federal award; and (2) the costs are reasonable and consistent with the LEA's established procedures. 2 CFR §200.474(b).

The LEA's travel procedures are more restrictive than Federal or state guidelines. These procedures are listed below and can also be found on NBISD's Business Office website.

Employees authorized to travel for business and educational purposes on behalf of the District shall be reimbursed for usual and customary travel-related expenses incurred while conducting District business. Expenses are to be within the established District guidelines and will be reimbursed with proper documentation. In addition, if these costs are charged directly to a Federal award, documentation must be maintained that justifies that (1) participation of the individual is necessary for the Federal award; and (2) the costs are reasonable and consistent with the LEA's established travel policy 2 CFR §200.474(b). This justification may be provided on the Out of District Travel Request Form.

These travel procedures and guidelines have been established to ensure compliance with IRS regulations, applicable State/Federal laws, and to set a standard of equitable guidelines for all persons travelling on behalf of the District.

The processes established herein have been developed on the premise that employees will use good judgement and prudence in the expenditure of District funds when travelling. Travelers are expected to select the most economical and proactive accommodations, arrangement and services in accordance with the needs of the trip.

## ii. Approval for Travel

- (a) Prior approval for travel from the Principal/Department Head for all travel, including pre-registration fees, shall be obtained before any expenses are incurred or before any Purchase Orders, commitments, etc., can be made; otherwise no payments/reimbursements will be made. Employees must download and electronically submit the New Braunfels ISD Out of District Travel Request Form.
- (b) The Principal/Department Head must ensure sufficient funds are available in the travel budgetary account before travel is approved.

- (c) Expenses that can be approved are lodging, meals, transportation, parking, and registration. Purchase Orders should be issued for the expenses such as hotel and registration fees to avoid duplicate payments and to ensure funds are available, since costs can be significant.
- (d) Out of State travel requires Superintendent or designee's approval prior to travel.
- (e) Overnight hotel stays for a one-day event, within a 50 mile radius of the NBISD Administration Building, are not allowed unless prior approval by Superintendent or designee is obtained.
- (f) The District will reimburse travel expenditures only AFTER the trip has occurred and original receipts are turned in with an approved Out of District Travel Request Form.
- (g) Out of District Travel Request Forms should be turned in within 10 days of the return date of travel. Any travel report turned in after 10 days may not be reimbursed. All August reimbursements must be submitted by September 15<sup>th</sup>.

### iii. Reimbursement Procedures

- (a) The District may pay for employee travel expenses that are reasonable and necessary when the travel clearly involves official District business including authorized staff development.
- (b) Travel expenses will be reimbursed ONLY when submitted on the NBISD Out of District Travel Request Form found on the New Braunfels ISD website, approved and signed by the Principal/Department Head. It shall be the responsibility of the employee requesting reimbursement and the employee approving the travel to ensure that the travel is in accordance with the preceding guidelines.
- (c) An employee's travel expense reimbursement shall not exceed the amount of funds available in the current budget for such travel.
- (d) When Federal or other State/Special Revenue Funds are used, travel reimbursements are not always allowable. Local funds can be used, but must be coded as such on the requisition and Out of District Travel Request forms.
- (e) **Request for reimbursements MUST BE RECEIVED in Accounts Payable office BY WEDNESDAY AT 5:00 P.M. to receive a CHECK THE FOLLOWING FRIDAY.**
  - (i) Any trips taken without proper and prior approval will be at the employee's expense.

### iv. Mileage

The mileage reimbursement rate will be determined by the current rate posted on the Texas Comptrollers website for ALL funds when traveling in a private vehicle.

- (a) If commercial transportation (bus, taxi, etc.) is used, reimbursement shall be **made for actual expenses and a receipt is REQUIRED.**
- (b) Each employee is assigned a home campus. Mileage will not be paid for travel between the employee's residence and his/her home campus. When traveling to places other than the home campus, mileage shall be computed from the home campus or the employee's residence (whichever is less). For itinerant staff, your home campus is the first campus you visit for the day.
- (c) Transportation – Four-per-car rule (per TX Govt. Code, Section 660.044)
  - When employees from the same agency travel on the same dates with the same itinerary, they must coordinate travel.
  - When four or fewer employees travel on the same itinerary, only one may be reimbursed for mileage.
- (d) The District may verify mileage and change accordingly when mileage is deemed excessive or unreasonable.
- (e) There shall be NO reimbursement for In-District travel expenses other than mileage.
- (f) There are mileage reimbursement restrictions for administrators as follows:
  - Travel by administrators (Assistant Principals, Principals, Directors and above) for In-District meetings (board meetings, monthly and quarterly principals meetings, athletic events, trips to Central Office or other campuses, etc.) is not reimbursable.
  - Only travel outside of a 25 mile radius, computed from the home campus or from the employee's residence (whichever is less), is reimbursable for administrators.
- (g) A map (Google) must be attached to the Out of District Travel Request Form for all out of district travel.

Refer to the In District Mileage Chart for In-District mileage between in-district duty points.

v. Meals – Employee

**OVERNIGHT stays will be reimbursed up to a maximum of \$36.00 per day** and an itemized meal expenditure report must be completed when traveling with **federal funds**—in-state and out-of-state travel. The employee must have incurred the expense in order to be reimbursed. This rate is subject to change if the state rate is reduced. Receipts are not required for meal expenses reimbursed with local funds. The \$36.00 per day is prorated according as described on the **GUIDELINES FOR OUT-OF-DISTRICT TRAVEL REIMBURSEMENT** that is included with the **OUT-OF-DISTRICT TRAVEL REQUEST** form available on the NBISD website.

- (a) Must indicate on the Out-of-District Travel Request Form if there is an overnight stay.
- (b) There will be no meal reimbursements for day trips.

(c) The conference agenda must be attached to the Travel Reimbursement Request Form.

vi. Lodging

- (a) A PURCHASE ORDER MUST BE ISSUED FOR LODGING. Personal credit cards should NOT be used for lodging expenses. Employees are encouraged to share rooms and all names of individuals sharing a room and dates of stay must be listed on the Purchase Order (Example: 1 room for 3 nights for Sue Smith and Sally Brown, September 9 -12).
- (b) Itemized original lodging receipts are required and must be turned in to Accounts Payable, with the PO number noted on receipt, within 5 business days after trip. Any refunds issued should be returned and attached to the itemized lodging receipt (credit card receipts are not acceptable).
- (c) The lodging reimbursement is based on the State of Texas Travel Allowance Guide.
- (d) In-state travel is reimbursed up to \$85 a night for areas not listed on the Allowance Guide.
- (e) All in-state lodging reimbursement rates EXCLUDE STATE SALES TAX. A tax exempt form must be taken to the vendor.
- (f) Occasionally, prevailing hotel rates exceed the maximum allowable reimbursement rates, despite reasonable efforts to locate alternatively priced accommodations. In these situations, the CFO or his/her designee may grant exceptions to the established reimbursement rates.
- (g) These exceptions will only be considered via written request and in advance of the travel and the overage must be paid from local funds.
- (h) Overnight hotel stays for a one-day event, within a 50-mile radius of the NBISD Administration Building, are not allowed unless prior approval by Superintendent or designee is obtained.

vii. Parking/Public Transportation

- (a) A receipt or itemized statement is required for parking. Valet parking should not be used unless it is the only viable option.
- (b) As a general rule, tolls will not be reimbursed.
- (c) Public transportation is approved for use when feasible.
- (d) The District may reimburse an employee for the actual cost of transportation by bus or taxi.

- (e) If two or more employees share a taxi, only the employee, who paid for the taxi, may be reimbursed for that expense. Original receipts are required and must show the date, fare charged and transportation company.
- (f) Employees are expected to use the most economical means of transportation available.

#### viii. Airfare

- (a) The District may pay for the actual cost of commercial air transportation; however, the amount may not exceed the cost of the lowest available airfare.
- (b) An original passenger receipt, issued by a commercial airline company, must be included in the supporting documentation for the cost of transportation on the airline.
- (c) The receipt must include the name of the employee and airline, ticket number, class of transportation, fare, travel dates, amount, origin and destination.

#### ix. Baggage Fees

Baggage charges that are related to LEA business are reimbursable. It is assumed that the first checked bag is necessary to complete business travel. Charges for more than one bag will not be reimbursed, unless excess baggage is related to LEA business (e.g. LEA-owned equipment). Justification will be required for any excess baggage charges when submitted for reimbursement.

#### x. Out of State Travel

Out of state travel requires Superintendent or designee's approval in addition to the Department Head or Principal approval.

#### xi. Unallowable Expenses

Unallowable expenses include, but are not limited to:

- Any expense incurred by family members and other types of personal expenses
- Dry cleaning and laundry
- Alcoholic beverage charges
- Telephone calls
- Internet Services (unless needed for a business purpose and approved by the CFO)
- Movie charges, Personal entertainment
- Tips & Gratuities (except for mandatory service charges)
- Room service/delivery fees
- Dependent care

**A DISTRICT EMPLOYEE SHALL ENSURE THAT HIS OR HER TRAVEL COMPLIES WITH THESE PROCEDURES. FAILURE TO COMPLY WILL RESULT IN DELAYED REIMBURSEMENT OR REJECTION OF THE EMPLOYEE'S REIMBURSEMENT REQUEST.**

#### xii. Parent Travel for Grant Related Parental Involvement Activities

Parent travel for grant related parental involvement activities will be reimbursed at employee rates.

#### xiii. Federal & State Funded Program Travel

If travel is funded by Federal or other State/Special Revenue Funds, the rates shown above are the maximum that can be paid by the grant or program funds. If a hotel rate exceeds these amounts then the additional charges will be paid from local funds.

#### xiv. Use of School Vehicles

Occasionally, employees have access to school vehicles. School district vehicles are to be used for school business only. Employees are not to use a school vehicle for personal use (e.g., grocery shopping, or conducting other personal business).

#### xv. Student Group Travel

- (a) Extra-Curricular activities often require that students travel to other sites. Students should be transported in District vehicles because they are covered by the District's insurance.
- (b) Student meals will be allowed up to \$6 a meal, with a maximum of \$18 day. When leaving the District, student travel beginning after 10:00 am will not receive a breakfast allotment. When leaving the District, student travel beginning after 5:00 pm will only receive a dinner allotment for that day. Multiple meal allotments may be spent on one meal. Unused meal money and itemized receipts must be returned to the Business Office within 5 business days after the event. When possible, all requests for Out-of-District travel should be processed at least two weeks in advance.
- (c) It is the responsibility of each principal/director to determine when it is appropriate to provide students with meals. General procedure dictates payment of meals for competition outside the city and in regional or higher activities.
- (d) The athletic director, band director or group sponsor will make arrangements indicating the event, amount per person, and how many. Meals for the coaches, sponsors and bus driver can be included with the group. A written invoice must be turned in to the Business Office.
- (e) If a pre-arrangement cannot be made then a meal allowance may be provided to each participating student, coach, sponsor and driver. A requisition should be entered for payment to be made to the coach. The requisition must include the following: event name, number of meals, and amount (currently \$6.00). A receipt for each person receiving the funds should be turned in afterwards as well as any unspent funds. The two amounts added together should equal the requisition amount.

(f) Other allowable travel expenses of the sponsor and bus driver will be reimbursed on the District Travel Reimbursement Request Form.

(g) Tips & gratuities are not allowable expenses (except for mandatory service charges).

d. Field Trips

State and local funds may only be used for instructional field trips. As a general rule, Federal funds are not to be used for field trips. TEA policy defines educational field trips as generally unallowable unless they are identified as allowable in the program guidelines to the specific grant application. A justification form must be submitted to the Program Administrator for allowable field trips in the grant application. All field trips require prior approval.

e. Hosting a Conference: [Insert new TEA guidance when received]

f. Program-Specific Fiscal Compliance

i. IDEA-B

The Director of Special Education will monitor compliance with Maintenance of Effort (MOE) on a regular basis, but at least annually. Necessary adjustments will be made prior to the end of the fiscal year to ensure compliance. MOE analysis required for the Eligibility Standard to be reported in the BS6016 Fiscal Compliance schedule of the Special Education Consolidated Grant application will be performed and the data provided to the Director of Special Education prior to the submittal deadline for the new grant year's initial application. Documentation of the calculations for the Compliance Standard and the Eligibility Standard will be maintained in the Business Office.

The Director of Special Education will determine if the LEA qualifies for the Voluntary Reduction option for MOE and reporting on the BS6016 Fiscal Compliance schedule of the Special Education Consolidated Grant application. The analysis will be performed prior to the submittal deadline for the new grant year's initial application and performed again when the IDEA-B maximum entitlements are released by TEA. Documentation of the calculation will be maintained in the Special Education Office.

The Director of Special Education will monitor compliance with the Federal requirement to provide proportionate share services to parentally-placed private school children with disabilities for the IDEA-B program. The proportionate share requirement is not applicable to charter schools or to any ISD that does not have private schools (including home-schooled children) in their jurisdiction. The Director of Special Education will compile the data required on the Private School schedule of the Special Education Consolidated grant application prior to the submittal deadline for the new grant year's initial application. The Director of Special Education will ensure all applicable parties are aware of the proportionate share amount determined during receipt of the initial IDEA-B entitlement and the revised proportionate share amount determined when TEA releases maximum entitlements. The Director of Special Education will track proportionate share expenditures by using a local option code to ensure funds are used for

the intended purpose and to monitor unused proportionate share funds carried over to the subsequent year. If the proportionate share carryover funds are not spent toward the end of the carryover year and every attempt has been made to spend the proportionate share funds on parentally-placed private school children with disabilities, the LEA may then spend the funds on public school children with disabilities. The Director of Special Education will make the necessary adjustments, if applicable. Documentation of the calculations and monitoring of funds and expenditures will be maintained in the Special Education Department.

If the LEA reserves IDEA-B funds for Coordinated Early Intervening Services (CEIS), the Director of Special Education will track CEIS expenditures by using a local option code to ensure funds are used for the intended purpose. The Director of Special Education will be responsible for tracking CEIS activities and students served according to the Federal reporting requirements for CEIS. The Director of Special Education will be responsible for compiling the required data and reporting to TEA by the deadline established by TEA. Documentation of the tracking of expenditures and students served will be maintained in the Special Education Department.

ii. ESSA

The Program Administrators will monitor compliance with Maintenance of Effort and Comparability for ESSA. Program Administrators will monitor compliance related to Equitable Services for Private School Children, Ranking of Campuses for Multiple Attendance Area, Services to Homeless Students Attending Campuses Not Served by Title I, Part A, Set-Aside Funds for School Improvement, District-Wide Parental Involvement Activities, Set-Aside Funds for Professional Development for Highly Qualified, etc., for ESSA/ESSA.

The LEA does not participate in school-wide Consolidation of Funds.

## **F. Cash Management**

### **1. Cash Management for Federal Funds 2 CFR §200.305**

The LEA will comply with applicable methods and procedures for payments that minimize the time elapsing between the transfer of funds from the U.S. Treasury or pass-through entity (such as TEA) and the disbursement by the LEA, whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. 2 CFR §200.305(b).

Generally, the LEA receives payment of Federal funds from the Texas Education Agency (TEA) on a reimbursement basis. However, if the LEA receives an advance in Federal grant funds, the LEA will remit interest earned on the advanced payment to the Federal agency, according to the EDGAR requirements.

According to guidance from the U.S. Department of Education (ED), when calculating the interest earned on ED grant funds, in any situation where the State draws from the G5 system in advance of the LEA using non-Federal funds to pay vendors and/or employees, the only events and dates that are relevant are: 1) the date on which the Federal grant funds are drawn down by the State; and 2) the date on which those funds are disbursed by the LEA. Any interest earned on those funds while on-deposit in

the LEA's bank account after drawdown and before disbursement must be included in the interest earned calculation.

The Business Office monitors the drawdowns to determine whether the payment of Federal funds to the LEA is a reimbursement or an advance payment. If an advance payment, the Business Office ensures compliance with the interest requirements.

a. Payment Methods

i. Reimbursements

The LEA initially funds Federal grant expenditures with non-Federal funds and then seeks reimbursement with Federal funds.

According to TEA guidance, to be considered a reimbursement, an LEA draws down from TEA via the ER (Expenditure Reporting) system on or after the date the payment is mailed, delivered, or electronically delivered.

For grants managed through the TEA Expenditure Reporting (ER) system, the LEA Accounting Budget Analyst will enter cumulative expenditure amounts, on a monthly basis, for actual expenditures incurred and saves the transaction for the Coordinator of Financial Services to then certify and submit drawdowns in the TEA ER system.

For grants managed through the Department of Ed G5 system, the LEA Accounting/Budget/Analyst will prepare a report, on a monthly basis, documenting reimbursement for actual expenditures incurred. The Accounting/Budget/Analyst will then enter the reimbursement request into the G5 system. All reimbursements are based on actual disbursements, not on obligations.

Consistent with state and Federal requirements, the LEA will maintain source documentation supporting the Federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for the TEA's and Department of Ed's review upon request.

Reimbursements of actual expenditures do not require interest calculations.

Please see page 39 for procedures on expenditure reports for federal awards.

ii. Advances

The LEA does not request advance payment of Federal grant funds. If the LEA inadvertently receives an advanced payment, the Business Office will take steps to ensure the immediate return of these funds and will ensure its financial management system meets the standards for fund control and accountability as established in EDGAR.

According to TEA guidance, if the LEA draws down Federal funds from TEA via the ER (Expenditure Reporting) system prior to making the payment (prior to the time the payment is

mailed, delivered, or electronically delivered), the draw down is considered an advance. The payment date is the actual date of disbursement, not the date encumbered or scheduled for payment according to the accounting treatment. When additional guidance is received from TEA, this section will be updated. By definition, payroll accruals are wages, salaries, the related payroll taxes, TRS and IRS payments, and benefits that have been earned by an organization's employees but have not yet been paid by the organization. The payroll accruals should not be claimed for reimbursement until they are reversed and paid out as payroll expenditures.

According to 2 CFR §200.305(b)(1), the LEA will limit its advance payment requests to the minimum amounts needed and will time the advance payment to be in accordance with the actual, immediate cash requirements of the LEA in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the LEA for direct program or project costs and the proportionate share of any allowable indirect costs. The LEA must make timely payment to contractors in accordance with the contract provisions. Although limited advanced payments are allowable, the LEA will not request advanced payments.

According to 2 CFR §200.305(b)(7)(i), the federal government and TEA must not require separate depository accounts for funds provided to the LEA and must not establish any eligibility requirements for depositories for funds provided to the LEA. However, the LEA will have a process in place to account for the receipt, obligation, and expenditure of funds. The LEA does not choose to maintain a separate depository account for the advance payment of Federal funds received from TEA.

According to 2 CFR §200.305(b)(7)(ii), advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible. The LEA's depository account is maintained in an insured account.

According to 2 CFR §200.305(b)(8), the LEA will maintain inadvertent advance payments of Federal funds in interest-bearing accounts, unless an allowable exception applies: (1) The LEA receives less than \$120,000 in Federal awards per year; (2) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances; (3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources; (4) A foreign government or banking system prohibits or precludes interest bearing accounts. The LEA maintains its advance payments of Federal funds in interest-bearing accounts. The LEA will compute interest at the same rate the account earns.

According to 2 CFR §200.305(b)(9), the LEA may retain interest amounts up to \$500 per year for administrative expenses. The LEA defines administrative expenses to include costs associated with human resources, budgeting, accounting, purchasing, and other fiscal activities.

Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted to the Federal agency according to the requirements of EDGAR. The interest must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing

House (ACH) network or a Fedwire Funds Service payment. Detailed information for submitting the earned interest is found at 2 CFR §200.305(b)(9).

The LEA calculates interest using the actual interest rate of the appropriate investment account.

Regardless of the date of obligation, interest is calculated from the date that the Federal funds are drawn down from the ER system (for state administered programs) or the G5 system (for direct grant programs) and deposited into your investment account, until the date on which those funds are disbursed by the LEA.

Interest does not accrue if the LEA uses non-Federal funds to pay the vendor and/or employees prior to the funds being drawn down, because that method would be a reimbursement rather than an advance.

Interest earned on inadvertent advanced payments will be tracked in a Due To State/Federal Government Liability Account. Payment of the interest will be made in accordance with applicable state and Federal guidelines.

b. Expenditure Reporting System

i. Reimbursements

Reimbursement requests will be submitted via the TEA Expenditure Reporting (ER) system or G5 system.

The Accounting/Budget Analyst is responsible for preparing and submitting the required expenditure reports for Federal awards, at least monthly through the ER system. The Accounting/Budget Analyst will prepare the required expenditure reports for the Federal grants that go through the G5 system, at least monthly. The review should occur after the processing of payroll. The Accounting/Budget Analyst will generate a General Ledger Summary report in the LEA's accounting system for each Federal grant. The actual expenditures will be totaled by class object code on an excel spreadsheet. Any payroll liabilities that appear in the balance sheet accounts will be deducted from the 6100 object code total. This will prevent drawing down more cash than has actually been expended, thereby keeping the draw down as a reimbursement.

The Coordinator of Financial Services is responsible for reviewing and certifying the Federal expenditure reports through the certification process of the ER system. The Accounting/Budget Analyst will submit the direct grant programs through the G5 system. The Accounting/Budget Analyst ensures draw down requests will not exceed the threshold amount established by TEA. The Accounting/Budget Analyst ensures final expenditure reports, and revised final expenditure reports, if applicable, are submitted by the deadlines established by TEA.

The Accounting & Budget Analyst records cash receipts for the LEA, and determines which account code(s) to post the revenue.

Consistent with state and federal requirements, the LEA will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and documentation supporting the draw down requests and will make such documentation available for the TEA's review upon request. The Business Office maintains the documentation.

## **2. Local Cash/Check Handling**

Cash and check handling is a priority in a campus office or district department whenever money is collected. This applies to ALL funds including the General Fund and all Activity Funds. All cash and checks received from school sanctioned activities must be receipted (by ticket sales, cash register, point of sale register, or district approved receipts).

All cash and checks will be presented to the campus administrative assistant on a daily basis in the form they were received. No post-dated checks will be accepted. Funds must not be kept in classrooms, personal wallets or purses, or at home. No funds are to be deposited into personal bank accounts with the intent to reimburse the District later. No cash purchases may be made from the receipts; every dollar collected must be receipted by the campus administrative assistant.

The campus administrative assistant will receipt and deposit all monies on a daily basis in the bank or secure overnight in a locked campus safe if the deposit cannot be made the same day. Personal employee checks may not be cashed from monies collected at the campus or LEA level to ensure an adequate audit trail of all funds collected by the LEA. All cash and checks must be deposited in the form they were received.

Cash received from miscellaneous sources must never be co-mingled with a Petty Cash Fund. Petty cash funds are only allowed with prior approval from the CFO.

### **a. General Cash and Check Receipt Procedures**

- i. A cash receipt shall be prepared immediately for any cash or checks received by the administrative assistant. Cash receipts must be issued in numerical sequence. For cash receipting procedures concerning Activity funds see the Activity Fund Manual.
- ii. The receipt must be completed in its entirety, including:
  - Name of school - may be manual or stamped.
  - The date and the amount.
  - The payer - an individual or firm. A receipt may not be issued to more than one person.
  - For - an explanation of the purpose for which the money was received.
  - The correct account code - the General or Activity Fund account to be increased by the amount of the receipt.
  - The signature of the person receiving the money - the signature must be MANUAL; signature stamps are strictly forbidden.

- iii. An actual cash count should be made by the person signing the receipt in the presence of the person turning in the money. If this is not feasible, an alternative would be to put the cash and/or checks into a sealed envelope in the presence of the person turning them in until such time as two individuals could unseal the envelope and verify the amount submitted.
- iv. The maker of a check must be indicated on the receipt if it is other than the person turning in the money. Postdated checks shall not be accepted by the school from any source.
- v. If an error occurs in the preparation of a cash receipt, initial the correction on both the original and the duplicate receipt.
- vi. The original of a voided cash receipt must be attached to the carbon copy and both documents clearly marked as VOID.
- vii. The original cash receipt shall be given to the person paying the money. If a check is received by mail from an outside source for commission, interest, refund, etc., it is not necessary that the original receipt be mailed to comply with this procedure. In these cases, the original receipt should be kept on file for audit purposes.
- viii. The copy (pink) of the receipt must be retained in the receipt book.
- ix. Cash receipts are not to be pre-signed or predated.

### **3. Petty Cash/Change Accounts**

The following guidelines shall govern Petty Cash/Change Accounts:

- a. Petty Cash accounts must be approved by the CFO. According to the needs of the Petty Cash account, limits will be set by the CFO.
- b. Petty Cash/Change Accounts may not be associated with federal grants.
- c. It is the responsibility of the department/campus administrator to exercise the maximum available protection of these funds.
- d. Petty cash should be used only in an emergency not used in place of a purchase order. It may be used for small items such as lost book refunds, etc. Open purchase orders can be used for routine small expenses. Purchases are not allowed out of Change Accounts.
- e. As the custody of funds changes throughout activities associated with Petty Cash/Change Account funds, responsibility for the safeguarding of these funds lies with the current custodian.
- f. Petty Cash/Change Accounts are reconciled at the end of the fiscal year by the Accounting & Budget Analyst.

For Petty Cash/Change Account Operating Procedures, see the Activity Fund Manual.

#### **4. Check Processing**

State law requires that LEAs pay all invoices within thirty (30) calendar days to avoid penalty and interest charges.

The Business Office ensures invoices are paid within thirty (30) days.

The LEA's checks are processed on Friday for all checks of each week. The Business Office determines the date that vendors will be paid; employees should avoid making prior commitments to vendors about payment disbursements.

All payments must be pre-authorized by an approved purchase order. No checks or payments will be issued without an approved purchase order on file prior to purchase of goods or services with the exception of the following:

- Utilities.
- Reimbursements via revenue accounts.
- Any other exceptions require prior CFO approval.

These exceptions require a signature from the appropriate principal/department head.

#### **5. Returned Checks**

In the event that a check written to any LEA campus, club, or organization is returned unpaid by the bank, the bank will make a second attempt to clear the check. If the check fails to clear the second time it is returned to the campus or department for collection.

LEA personnel should attempt to recover payment on a returned check. The campus or department that accepted the bad check will be notified that the amount of the check has been deducted from their account, pending recovery of the bad check. The campus or department will be notified once the check has been recovered and credited back to their account.

### **G. Timely Obligation of Funds**

#### **1. When Obligations are Made**

Obligations are orders placed for property and services, contracts and sub awards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period. 34 CFR §200.71.

The LEA's Business Office, in conjunction with Program Administrators/department heads/principals, determines that the timing of obligations are compliant with the following table.

In an effort to ensure compliance, the following steps are taken:

- Vendors are notified via LEA/Purchasing Cooperative/Consultant agreements that they must have an approved purchase order (including fully executed contracts) before goods/services are provided.

- Accounts Payable monitors invoice dates to ensure that they are not prior to PO dates.
- Traveler must complete Out-of-District Travel Request Form.

The following table illustrates when funds are determined to be obligated under Federal regulations:

<b>If the obligation is for:</b>	<b>The obligation is made:</b>
Acquisition of property	On the date which the LEA makes a binding written commitment to acquire the property
Personal services by an employee of the LEA	When the services are performed
Personal services by a contractor who is not an employee of the LEA	On the date which the LEA makes a binding written commitment to obtain the services
Public utility services	When the LEA receives the services
Travel	When the travel is taken
Rental of property	When the LEA uses the property
A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, Subpart E-Cost Principles	On the first day of the project period

34 R §75.707; 34 CFR §76.707.

## 2. Period of Availability of Federal Funds

All obligations must occur on or between the beginning and ending dates of the grant project. 34 CFR §76.707. This period of time is known as the period of availability. The period of availability is dictated by statute and will be indicated in the GAN/NOGA. Further, certain grants have specific requirements for carryover funds that must be adhered to.

### a. State-Administered Grants

As a general rule, state-administered Federal funds are available for obligation within the year that Congress appropriates the funds. However, given the unique nature of educational institutions, for many Federal education grants, the period of availability is 27 months. Federal education grant funds are typically awarded on July 1 of each year. While the LEA will always plan to spend all current grant funds within the year the grant was appropriated for, the period of obligation for any grant that is covered by the "Tydings Amendment" is 27 months, extending from July 1 of the fiscal year for which the funds were appropriated through September 30 of the second following fiscal year. This maximum period includes a 15-month period of initial availability, plus a 12-month period for carryover. 34 CFR §76.709. For example, funds awarded on July 1, 2015 would remain available for obligation through September 30, 2017. TEA provides for the 27 month period of availability by

making the funds available July 1 through September 30 of the following year and then allowing a carryover period of an additional 12 months for unused funds.

b. Direct Grants

In general, the period of availability for funds authorized under direct grants is identified in the GAN.

c. For Both State-Administered and Direct Grants

According to 2 CFR §200.343(b), regardless of the period of availability, all obligations incurred under the award must be liquidated not later than 90 days after the end of the funding period unless an extension is authorized. Any funds not obligated within the period of availability or liquidated within the appropriate timeframe are said to lapse and must be returned to the awarding agency. 2 CFR §200.343(d). Consequently, the LEA closely monitors grant spending throughout the grant cycle.

According to TEA fiscal guidelines, all encumbrances, expenditures, and obligations of program funds must occur on or after the effective date of the grant application submitted to TEA (the date the application was received or the first day of the grant availability period, whichever is later) and within the grant beginning and ending dates listed on the NOGA. Grantees may generally enter cumulative expenditures into the TEA Expenditure Reporting (ER) system up to 30 days following the ending date of the grant.

### **3. Carryover**

a. State-Administered Grants

As described above, the Tydings Amendment extends the period of availability for applicable state-administered program funds. Essentially, it permits recipients to “carryover” any funds left over at the end of the initial 15 month period into the next year. These leftover funds are typically referred to as carryover funds and continue to be available for obligation for an additional 12 months. 34 CFR §76.709. Accordingly, the LEA may have multiple years of grant funds available under the same program at the same time.

TEA typically posts official Maximum Entitlement/Carryover funding amounts late in the fall semester. After required set asides are taken off the top, the program administrator will budget these additional Federal funds for specific campus and district-wide activities. These budgets are then submitted to the Business Office for posting in ITCCS.

b. Direct Grants

Grantees receiving direct grants are not covered by the 12 month Tydings period. However, under 2 CFR §200.308, direct grantees enjoy unique authority to expand the period of availability of Federal funds. The LEA is authorized to extend a direct grant automatically for one 12-month period. Prior approval is not required in these circumstances; however, in order to obtain this extension, the LEA

must provide written notice to the Federal awarding agency at least 10 (ten) calendar days before the end of the period of performance specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

The New Braunfels ISD Grant Project Director will complete the written request for a “no cost” extension of a direct grant. The written request will be based on evaluation data of project outcomes, implementation and activities. The extension will be for the purpose of completing project goals and activities and will not include any new objectives nor activities not in the original scope of the grant. The written request will be reviewed and approved by the New Braunfels ISD Superintendent or designee prior to submission to the Federal awarding agency. The written notice will include the reasons for the extension and the scope of activities to be completed during the extension period. The length of the extension period will be determined based on the remaining activities to be completed but will not exceed 12 months beyond the original grant termination date. The Grant Project Director will submit the notice to the appropriate Federal agency no less than 10 calendar days prior to end of the specified grant period.

The LEA will seek prior approval from the Federal agency when the extension will not be contrary to Federal statute, regulation or grant conditions and:

- The terms and conditions of the Federal award prohibit the extension;
- The extension requires additional Federal funds; or
- The extension involves any change in the approved objectives or scope of the project. 2 CFR §200.308(d)(2).

The New Braunfels ISD Grant Project Director will work with the Federal Program Officer or contact on behalf of the district to request prior approval for any extension that would increase or reallocate project funds and/or change the approved objectives or scope of the project. This request will be provided in writing in compliance with procedures defined in the specific Federal award. When prior approval is required, no changes will be implemented until notice of approval is received by the district from the appropriate Federal awarding agency representative.

## **H. Program Income 2 CFR 200.307**

### **1. Definition**

Program income means gross income earned by a grant recipient that is directly generated by a supported activity or earned as a result of the Federal award during the grant’s period of performance. 2 CFR §200.80.

#### **a. Program Income Includes**

Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. 2 CFR §200.80.

b. Program Income Is Not

Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. 2 CFR §200.80. Additionally, taxes, special assessments, levies, fines, and other such revenues raised by a recipient are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income. 2 CFR §200.307(c). Finally, proceeds from the sale of real property, equipment, or supplies are not program income. 2 CFR §200.307(d).

The district will not generate any program income as part of a Federal grant award.

## **II. PROCUREMENT SYSTEM**

The LEA maintains the following purchasing procedures.

### **A. Responsibility for Purchasing**

New Braunfels ISD board policy CH Local, delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that exceeds \$25,000 shall require Board approval before a transaction may take place, except as otherwise provided in policy CH (LOCAL).

Each year principals, department heads, site based committees, and program administrators assist in developing the budget, which is reviewed and approved by the Board of Trustees. Administrative Officers have the authority to approve and authorize requisitions of those items for which funds have been appropriated in the official budget. Principals and directors are accountable and responsible for operating within their approved budgets. One of the more important areas of responsibility in administration is the development and oversight of the budget. It is of utmost importance, in handling of budgeted funds, that all financial transactions be conducted within accepted procedures.

### **B. Purchase Orders**

#### **1. Definition of a Purchase Order**

A purchase order is an instrument used to encumber funds (setting aside funds in advance for the payment of goods and services when received or rendered). Texas Education Agency Bulletin 679, ACT 302 requires that an encumbering accounting system be in place.

According to the TEA 2010 Financial Accountability System Resource Guide, a purchase order serves as a formal order for goods, materials, and/or services from a vendor. A purchase order, once approved, is a binding commitment for an LEA to remit payment to the vendor after the item(s) and an invoice are received.

A purchase order is a purchaser's document to formalize a purchase transaction with a vendor. The purchase order should contain statements as to the quantity, description, and price of the goods or

services orders; applicable terms as to payment; discounts; date of performance; transportation arrangements; and other factors or suitable references pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

## **2. Use of Purchase Orders**

A purchase order, after the final approval process, is a binding commitment for the LEA to remit payment to the vendor after the LEA receives the item(s). A purchase order is also an important accounting document. It should contain information on the expenditure to be made and the account code to be charged. Once issued, the purchase order encumbers funds, which serves as an expenditure control mechanism. Finally, the purchase order is utilized in the accounts payable process as it documents that an order has been placed and is acceptable by the user; the user can make payment to the vendor upon verified and documented receipt of the goods/services.

Prior to the purchase of goods or services, a properly prepared and submitted purchase order shall be required.

Reimbursements for goods/services purchased personally will be reimbursed only if approved by the CFO prior to the purchase of the goods and does not exceed the amount of the purchase order (shipping costs should be included in the purchase order).

No changes or substitutions to a purchase order may be made without approval from the Campus/Department Administrator and Purchasing Coordinator.

All LEA personnel are required to follow the following guidelines for any purchase, regardless of fund source. In addition, Federal Program personnel will adhere to the applicable statute, regulations, and other grant requirements when making purchases. Employees who violate the LEA's purchasing procedures shall be held personally liable for the debt incurred.

Section 44.052 Texas Education Code states that a Superintendent that approves any expenditure of school funds in excess of the amount appropriated for that item(s) in the adopted budget commits a Class C misdemeanor offense. Consequently, close supervision and monitoring of the availability of budget dollars and of the approval process for requisition competitive procurement are important elements of the LEA's purchasing process.

All purchases require purchase orders, with the exception of the following:

- Utilities.
- Reimbursements via revenue accounts.
- Any other exceptions require prior CFO approval.

These exceptions require a signature from the appropriate principal/department head.

All purchase orders require approval with a requisition, using the ITCCS electronic requisition module. No confirmation ("after-the-fact") purchase orders will be allowed without justification and approval by the Superintendent or CFO.

### **3. Requisitions**

According to the TEA 2010 Financial Accountability System Resource Guide (FASRG), a requisition is an internal document by which a campus or department of the LEA requests the purchasing department to initiate a purchase order. It is a request generated manually or electronically (through the use of automated systems) for the purchase of supplies, services, equipment, etc. The requisition should be in a standard format so that the information can be readily identified and transferred to a purchase order. If proper control procedures are used, the requisition and the purchase order can be combined on one form.

The LEA uses an electronic requisition system that generates pre-numbered requisitions. Only authorized personnel are granted access to this system. Also, this requisition system utilizes a specific approval path that every requisition must follow for approval.

The requisition should always include, at a minimum, the following:

- A description of the item(s) to be purchased (The description should be complete enough for anyone to understand the item(s) being purchased);
- The quantity needed/requested;
- The proposal number, if applicable;
- Vendor name (Use the LEA's approved vendor list and applicable bid number);
- The code of the account to be charged;
- Pricing;
- Transportation (shipping) arrangements and cost, if any;
- Payment terms;
- Discounts, if any.

Access to the requisition system is permitted once the principal/department head e-mails the Coordinator of Financial Services requesting access or change and permission is granted by the CFO.

When a request for goods or services is made to the campus/department designee, an electronic requisition is generated in ITCCS by the designee.

Upon entry in ITCCS, requisitions are routed through an approval chain before becoming a purchase order. The approval chain is as follows:

- Principal/Department Administrator
- Technology Department (if technology related)
- Business Office
- Purchasing Coordinator

### **4. Purchase Orders**

The purchase order is the written evidence of orders placed as a result of properly initiated and approved purchase requisitions. The LEA's electronic requisition system generates pre-numbered purchase orders. Once the requisition Approval Path is completed, the purchase order is generated. The purchase order should always include, at a minimum, the following:

- Vendor name and address;

- Description of goods or services, including pertinent factors, such as size, color selection, etc.;
- Quantity of goods;
- Price (per unit and in total);
- Account codes (excluded from vendor copy);
- Payment terms;
- Discounts, if any;
- Transportation (shipping) arrangements;
- Bid and quote (if applicable) numbers;
- Other pertinent factors, such as delivery destination.

All purchase orders are submitted to vendors by the Business Office.

During review and approval of requisitions and purchase orders, special attention should be given to the account coding. If there are not sufficient funds in the account the expenditure is to be coded to, the principal/department head or designee will request either a budget transfer or budget amendment. Requisitions that are not correctly coded will be returned to the campus/department, causing delays in the approval process.

For control purposes, the Business Office maintains electronic records in ITCCS of all purchase orders issued. At the beginning of each fiscal year, the Coordinator of Financial Services assigns the initial number generated for requisitions and purchase orders. ITCCS then assigns the next available number.

## **5. Blanket/Open Purchase Orders**

According to the TEA 2010 Financial Accountability System Resource Guide (FASRG), a blanket purchase order is issued to a pre-approved vendor authorizing purchases from that vendor over a period of time. Blanket purchase orders are valuable because they allow the purchase of items quickly, may eliminate numerous individual purchase orders for small dollar-value items, and usually reduce paperwork and related processing costs. However, blanket purchase orders must follow certain criteria: pre-qualification of vendors, limitation on the maximum amount for purchases. Blanket purchase orders are issued so that supplies, materials, or services are available “as needed” by user departments.

The Purchasing Coordinator is responsible for the pre-qualification of vendors and ensures that the number of vendors to whom blanket purchase orders are issued is limited.

The use of blanket purchase orders, including their amounts and duration, are approved by the Business Office.

All blanket purchase orders are generated with a broad description and closed prior to fiscal year-end. All receipts must be submitted to the Business Office within 30 calendar days of the purchase. All June purchase receipts must be submitted to the Business Office ASAP.

## **6. Cancellation of Purchase Orders**

In the event it is necessary to cancel a purchase order, the principal/department head or designee notifies Accounts Payable in writing so the encumbrance can be reversed.

## **7. Encumbrances**

Encumbrances are funds that have been reserved when a purchase requisition is finalized and encumbered. When a requisition is processed, funds are placed aside for that transaction and are no longer available for use in other transactions to prevent the possibility of budget overspending. Encumbrances are used as a general planning tool, to predict cash outflow, and to avoid overspending. The amount of the encumbrance is subtracted from the account balance and once payment is made, the encumbrance will be reversed.

## **8. Invoices/Payment Requests**

Vendors are required to submit all invoices to the Business Office. If received at the campus or department office, invoices will be forwarded immediately to the Business Office.

The processes for payment of goods and services received:

- For goods received at the campus/department, the administrative assistant will sign the receiving copy of the purchase order and forward it to the Business Office.

If the quantity or amount invoiced exceeds the original encumbrance by 10% or less the payment will be processed.

Texas law requires that all invoices be paid to vendors within thirty (30) calendar days of receipt of the goods/services. If the LEA fails to pay promptly, the vendor can assess penalty interest charges. If a school employee neglects to submit an invoice on a timely basis, he/she may be held personally liable for the penalty interest charges.

Invoices for goods must contain a clear description of the merchandise. Invoices for contracted services must include documentation containing dates, hours, students served, if applicable, and services provided, along with the total amount due for services rendered. A statement on the invoice "for services rendered" will not be accepted in lieu of a detailed description of the services performed.

Payment requests for security, game officials, utilities, travel reimbursement, and revenue reimbursement, with proper administrative approval, will be submitted immediately to the Business Office on approved forms.

## **9. Purchasing Deadlines**

In an effort to maximize the use of budgeted funds during the current fiscal year and meet the needs of the intended beneficiaries, the purchasing deadline for supplies and equipment shall be April 1st, unless the specific State or Federal grant specifies a different date.

Summer needs for staff development and summer school should be anticipated and ordered prior to April 1st.

Purchasing documents for services and travel should be submitted within thirty (30) calendar days from the date in which it was incurred. All June purchasing documents must be submitted by June 15th.

At times, the purchasing deadlines for State or Federal grants may be different from the deadlines stated above due to grant ending dates.

## **10. Required Documentation for Disbursement of Funds**

Third-party documentation is required to support disbursement of funds. Documentation includes, but is not limited to:

- Purchase Orders;
- Invoices;
- Original Receipts.

The LEA will maintain records sufficient to detail the significant history of procurement with Federal funds.

In addition to the documentation listed above, records for Federal funds will include, but are not necessarily limited to, the following:

- Rationale for the method of procurement;
- Selection of contract type;
- Contractor selection or rejection; and
- The basis for the contract price
- Documented in the District and Campus Improvement Plans
- Comply with Expenditure Request Forms

## **11. Registration Fees**

Registration fees are only processed and paid by purchase order. Registration is paid in advance of the conference, and is sent directly to the conference vendor. No payments are made to employees for reimbursement of registration fees.

The requisition/purchase order for registration must include the date of the event and the number/names of attendees.

If registration fees are paid with Federal funds, the fee must only be paid during the grant year in which the event occurs.

## **12. Sales Tax Exemption Form**

The Sales Tax Exemption Form shall be used for school-related purchases only. Misuse of the exemption form for personal purchases constitutes a misdemeanor.

Copies of the exemption form may be obtained from the Business Office. Taxes, which should have been exempt, will be unauthorized for reimbursement if the exemption form was not presented to the vendor at the time of the purchase.

### **13. Subscriptions and Memberships**

All costs for membership in business, technical, and professional organizations and subscription costs for business, professional and technical periodicals paid from Federal funds are purchased in the name of the organization, rather than the individual(s).

### **14. Vendors**

Purchases should be made from vendors that are on the LEA's approved vendor list. The approved vendor list is available on the Purchasing website. Priority should be given to these vendors since the goods and/or services have been subjected to the rigor of a competitive bid process. Purchases from unapproved vendors will be used in extenuating circumstances only, with prior approval from the CFO.

## **C. Purchase Methods**

The type of purchase procedures required depends on the cost of the item(s) being purchased.

### **1. Purchasing Thresholds**

The thresholds listed below incorporate all applicable requirements of Federal, state and local guidelines. All purchases must be made from vendors who are either on an NBISD contract, an approved cooperative list or an inter-local agreement.

#### **a. Local and State Purchases**

- i. Purchases up to \$4,999.99: Encouraged to secure a minimum of 3 quotes. If quotes are secured, all documentation concerning choice of vendor is to be kept by end user.
- ii. Purchases between \$5,000.00 - \$24,999.99: Must secure a minimum of 3 quotes. All quote documentation concerning choice of vendor is to be kept by end user and a copy of the Bid Quote Summary must be provided to the Business Office.
- iii. Purchases \$25,000.00 or above: Business Office will work directly with campus/department to determine bid process.

#### **b. Federal Purchases**

- i. The LEA utilizes the micro-purchase threshold for Federal purchases up to \$10,000 in the aggregate.
- ii. Purchases between \$10,000 - \$25,000 (referred to as Small Purchases): A minimum of 3 quotes are recommended. All quote documentation concerning choice of vendor is to be kept by end user and a copy of the Bid Quote Summary must be provided to the Business Office.
- iii. Purchases \$25,000 or above: Business Office will work directly with campus/department to determine bid process and secure Board approval.

## 2. Local and State Purchasing Laws

### a. State Purchasing Law TEC 44.031

The Texas Education Code (TEC) 44.031 addresses the requirement to competitively bid all LEA contracts for the purchase of goods and services valued at \$25,000 or more in the aggregate for each 12 month period, by the method that provides the best value for the LEA, according to the methods outlined in TEC 44.031:

- Competitive bidding;
- Competitive sealed proposals;
- A request for proposals, for services other than construction services;
- An inter-local contract;
- A design/build contract;
- A contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;
- A job order contract for the minor construction, repair, rehabilitation or alteration of a facility;
- The reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- The formation of a political subdivision corporation under Section 304.011, Local Government Code.

### b. School Buses (TEC 44.031(1))

Each contract proposed to be made by an LEA for the purchase or lease of one or more school buses, including a lease with an option to purchase, must be submitted to competitive bidding when the contract is valued at \$20,000 or more.

Since non-compliance of the requirements of TEC 44.031 may result in criminal penalties, these requirements will be strictly enforced.

### c. Contract with Person Indebted to LEA

In order to receive a contract or enter into a transaction with the LEA, the consultant, contractor, or vendor must represent that they are not indebted to the LEA.

Exceptions to the competitive bid requirement include:

- Contracts for the purchase of produce or vehicle fuel (TEC 44.031(a));
- Contracts for professional services rendered by a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse. Rather than be selected on the basis of competitive bids, the selection and award should be made on the basis of demonstrated competence and qualifications to perform the service and for a fair and reasonable price. (TEC 44.031(f); Government Code 2254.002(2)(B); 2254.003);
- Emergency replacement or repair of school equipment, school facility, or portion of school facility that has been destroyed, severely damaged or experiences a major unforeseen

operational or structural failure, as outlined in TEC 44.031(h) and approved by the Board of Trustees;

- Computers and computer-related equipment, including computer software acquired through the Department of Information Resources under contracts entered into in accordance with Government Code 2054 or 2157 (TEC 44.031(i));
- Sole Source Goods for items for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly; a film, manuscript, or book; a utility service, including electricity, gas, or water; and a captive replacement part or component for equipment. (TEC 44.031(j)). This Sole Source exception does not apply to mainframe data-processing equipment and peripheral attachments with a single-item price in excess of \$15,000 (TEC 44.031(k)).

d. Public Notice (TEC 44.031(g))

Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the LEA's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications.

If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the LEA's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

e. Award Determinations (TEC 44.031(b))

The following will be considered when determining to whom to award a contract:

- The purchase price;
- The reputation of the vendor and of the vendor's goods or services;
- The quality of the vendor's goods or services;
- The extent to which the goods or services meet the LEA's needs;
- The vendor's past relationship with the LEA;
- The impact on the ability of the LEA to comply with laws and rules relating to historically underutilized businesses;
- The total long-term cost to the LEA to acquire the vendor's goods or services; and
- Any other relevant factor specifically listed in the request for bids or proposals.

f. Electronic Bids or Proposals (TEC 44.0313)

The New Braunfels ISD's Board of Trustees does allow receipt of electronic bids or proposals.

g. Contracted Related and Management Fees Under Certain Cooperative Purchasing Contracts (TEC 44.0331)

- i. If the LEA enters into a purchasing contract valued at \$25,000 or more under TEC 44.031(a)(5), under Subchapter F, Chapter 271, Local Government Code, or under any other cooperative

purchasing program authorized for LEAs by law, will document any contract-related fee, including any management fee, and the purpose of each fee under the contract.

- ii. The amount, purpose, and disposition of any fee described above will be presented in a written report and submitted annually in an open meeting of the Board of Trustees of the LEA. The written report will appear as an agenda item.

h. Criminal History of Contractor (TEC 44.034)

The LEA may terminate a contract with a person or business entity if the LEA determines that the person or business entity failed to give advance notice to the LEA that the person or an owner or operator of the business entity has been convicted of a felony, according to TEC 44.034(a), or misrepresented the conduct resulting in the conviction. If the LEA terminates the contract for such reason, the LEA will compensate the person or business entity for services performed before the termination of the contract.

i. Construction Services, Design-Build Contracts for Facilities, Construction Manager-Agent, Construction Manager-At-Risk

The LEA will comply with the requirements found in TEC 44.035, 44.036, 44.037, 44.038, 44.039, 44.040, and 44.041 for specific information related to construction contracts.

Purchase or Lease of Automated External Defibrillator (TEC 44.047):

- If the LEA purchases or leases an automated external defibrillator, as defined by Section 779.001, Health and Safety Code, the LEA will ensure that the automated external defibrillator meets standards established by the Federal Food and Drug Administration. The Nursing Coordinator is responsible for ensuring compliance.

j. State Law TEC 44.0351

- i. Except to the extent prohibited by other law and to the extent consistent with this subchapter, a school district may use competitive bidding to select a vendor as authorized by Section 44.031(a)(1).
- ii. Except as provided by this subsection, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process under this subchapter. Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process under this subchapter: Sec 271.026 Opening of Bids. Bids may be opened only by the governing body of the governmental body of the governmental entity at a public meeting or by an officer or employee of the governmental entity at or in an office of the governmental entity. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. This subchapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.
- iii. Sec 271.027(a) Award of Contract. The governmental entity is entitled to reject any and all bids.

- iv. Sec 271.0275 Safety Record of Bidder Considered. In determining who is a responsible bidder, the governmental entity may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if:
  - The governing body of the governmental entity has adopted a written definition and criteria for accurately determining the safety record of a bidder;
  - The governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and
  - The determinations are not arbitrary and capricious.
- v. A school district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Section 44.031(b).
  - Purchase price;
  - Reputation of the vendor and of the vendor's goods or services;
  - Quality of the vendor's goods or services;
  - Extent to which the goods or services meet the district's needs;
  - Vendor's past relationship with the district;
  - Impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
  - Total long-term cost to the district to acquire the vendor's goods or services;
  - Any other relevant factor specifically listed in the request for bids or proposals.
- k. State Law TEC 44.0352:

In selecting a vendor through competitive sealed proposals as authorized by Section 44.031(a)(2), a school district shall follow these procedures:

- i. The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.
- ii. The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.
- iii. The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

iv. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.

I. Enforcement of Purchase Procedures According to Texas Education Code 44.032

According to TEC 44.032, an officer, employee, or agent of an LEA commits an offense if the person, with criminal negligence, makes or authorizes separate, sequential, or component purchases to avoid the requirements of TEC 44.031(a) or (b). An offense under TEC 44.032(b) is a Class B misdemeanor and is an offense involving moral turpitude.

An officer, employee, or agent of an LEA commits an offense if the person, with criminal negligence, violates TEC 44.031(a) or (b) other than by conduct described in TEC 44.032(b). An offense under TEC 44.032(c) is a Class B misdemeanor and is an offense involving moral turpitude.

An officer or employee of an LEA commits an offense if the officer or employee knowingly violates TEC 44.031, other than by conduct described in TEC 44.032(b) and (c). An offense under TEC 44.032(d) is a Class C misdemeanor.

The final conviction of a person other than a trustee of an LEA for an offense under TEC 44.032(b) or (c) results in the immediate removal from office or employment of that person. Additional information concerning a trustee who is convicted of an offense under TEC 44.032(b) or (c) may be found at TEC 44.032(e).

### 3. Federal Purchases

a. Micro-Purchases 2 CFR §200.320(a)

In accordance with 2 CFR §200.320(a), micro-purchases may be awarded without soliciting competitive quotations if the LEA considers the price to be reasonable. To the extent practicable, the LEA must distribute micro-purchases equitably among qualified suppliers.

Procurement by micro-purchase is defined in 2 CFR §200.67 as the acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1. This threshold is periodically adjusted for inflation. The current micro-purchase and simplified acquisition threshold has been increased to \$10,000 and found at: [https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%202\\_1.html](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%202_1.html)

Micro-purchase procedures comprise a subset of the LEA's small purchase procedures. The LEA uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

During budget development, the Program Administrator will identify potential purchases within the micro-purchase threshold. After potential micro-purchases are identified, the Program Administrator will select at least three comparable approved vendors, if available, from which to distribute equitable purchase amounts, to the extent possible. The Program Administrator will maintain copies of purchase orders related to micro-purchase in order to monitor compliance.

b. Small Purchase Procedures (\$10,000 - \$25,000)

Due to more restrictive NBISD Policy. According to 2 CFR §200.320(b), small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (less than \$25,000 in Texas for ISDs).

According to 2 CFR §200.88, Simplified Acquisition Threshold means the dollar amount below which an LEA may purchase property or services using small purchase methods. LEAs adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 and is periodically adjusted for inflation.

c. Purchases \$25,000 and above

For Federal purchases exceeding \$25,000, the end user shall work in consultation with the Purchasing Coordinator. The Purchasing Coordinator will determine the bid process (CSP, RFP, RFQ, etc.) working directly with the campus or department, if required. Award to be made by best value determination. Any single, budgeted purchase of goods or services that costs \$25,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place.

d. Purchases Over \$25,000

For ISDs, purchases over \$25,000 are subject to the more restrictive Federal law that restricts the procurement method to competitive bidding by sealed bids or competitive proposals) Restricted by NBISD POLICY.

i. Sealed Bids (Formal Advertising/ Also known as “Competitive Bidding” in TEC 44.0351):

Federal Law 2 CFR §200.320(c) (RESTRICTED BY NBISD POLICY)

For Federal purchases over \$25,000, bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and

- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- A firm fixed price contract award must be made in writing to the lowest responsive and responsible bidder.

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

ii. Competitive Proposals/ Also known as “Competitive Sealed Proposals” in TEC 44.0352:

Federal Law 2 CFR §200.320(d)

For Federal purchases over \$25,000, the technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- Proposals must be solicited from an adequate number of qualified sources; and
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The LEA may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

If competitive bidding is chosen as the purchasing method, the Program Administrator, as the Superintendent's designee, shall oversee preparation bid specifications. All bids shall be in accordance with administrative regulations.

All bidders shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.

iii. **Technical evaluations of proposals 2 CFR §200.320(d)(3)**

The LEA must have a written method for conducting technical evaluations of the proposals received under competitive proposals and for selecting recipients.

At a minimum, competitive proposals will be evaluated by an evaluation committee consisting of at least two designees, including at least one person with expertise in the area being evaluated. When considering proposals for goods, at least one evaluation will be conducted. When considering proposals for services, a two-step evaluation process will be conducted. The first step includes the evaluation of all proposals. The second step may include interviews with finalists. Unless otherwise stated in the proposal, evaluations and vendor selection will occur within two weeks of the closing date. Final selection may be determined by the School Board.

**4. Noncompetitive Proposals 2 CFR §200.320(f)**

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the LEA; or
- After solicitation of a number of sources, competition is determined inadequate.

The Program Administrator will provide, and the Business Office will maintain, adequate documentation that shows how the decision to use this method of procurement was reached, including the uniqueness of the services or goods sought, the scarcity of providers, and the specific expertise and experience of the vendor selected.

An online search for providers or a letter from the vendor stating they are the only source available is not sufficient. Upon investigation by the Purchasing Coordinator, a notarized confirmation of sole source compliance will be required in order to obtain goods and services utilizing this procurement method. A claim of sole source may qualify for noncompetitive proposal if the material is copyrighted or an upgrade to an item previously purchased from the provider is being purchased. However, the best practice is to first use the competitive proposal process and only when the results are inadequate to then proceed to noncompetitive proposal.

Notwithstanding any other provision of the Education Code, in the event of a catastrophe, emergency, or natural disaster affecting the District, the Board may delegate to the Superintendent or designated person the authority to contract for the replacement or repair of school equipment under Education Code Chapter 44, Subchapter B if emergency replacement or repair is necessary for the health and safety of District students and staff.

## **5. Contract Cost/Price Analysis 2 CFR §200.323**

The LEA performs a cost or price analysis in connection with every procurement action of a single item in excess of \$25,000 (Simplified Acquisition Threshold), including contract modifications. 2 CFR §200.323(a). A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the Program Administrator must come to an independent estimate prior to receiving bids or proposals. 2 CFR §200.323(a).

In completing a cost/price analysis, the Program Administrator will consider the applicable options listed below:

- Compare proposed costs/prices with those under existing contracts for the same or similar items/services;
- Compare costs/prices with previous estimates for the same or similar items/services;
- Apply rough yardsticks (e.g., dollars per pound, per square foot, per hour, etc.) to compare prices and highlight significant inconsistencies that warrant additional pricing inquiry;
- Compare competitive price lists, published catalog or market prices of commodities and products, similar indices and discount or rebate arrangements;
- Compare proposed prices with independent (i.e., in-house) cost estimates;
- Apply audited or pre-negotiated (e.g., by the Federal government) indirect cost (e.g., overhead) rates, labor, or other factors; and/or
- Consider projected cost trends.

A review of the cost/price analysis will be completed by the Program Administrator and Facilities Director.

When performing a cost analysis, the Facilities Director negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. 2 CFR §200.323(b).

## **6. Auditor Selection 2 CFR §200.509**

- a. Auditor procurement. In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§200.317 Procurement by states through 20.326 Contract provisions of Subpart D Post Federal Award Requirements of this part or the FAR (48 CFR part 42), as applicable. When procuring audit services, the objective is to obtain high quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the

results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority owned firms, and women's business enterprises, in procuring audit services as stated in §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, or the FAR (48 CFR part 42), as applicable.

- b. Restriction on auditor preparing indirect cost proposals. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.
- c. Use of Federal auditors. Federal auditors may perform all or part of the work required under this part if they comply.

## **D. Purchase Cards**

New Braunfels ISD authorizes the use of District credit cards for the sole purposes of securing hotel reservations, payment of lodging and local taxes, airfare, and hotel parking (if included in the hotel bill). Under no circumstances shall they be used to circumvent the purchase order system.

### **1. General Information**

- a. District credit cards are not to be used for personal use.
- b. Upon issuance, the employee becomes responsible for the security of the account number and credit card. The account number and credit card shall not be used by anyone other than the authorized employee, and only for the authorized purchase.
- c. New Braunfels ISD is a tax-exempt entity and does not pay State sales tax. If State sales taxes are charged, the cardholder is personally liable for reimbursement of all taxes charged if the hotel will not credit the charges or issue a refund.
- d. Credit cards must be returned to the Business Office by the close of business on the date designated when receiving the credit card.
- e. All credit card purchases require itemized receipts. Itemized receipts must be received by the Business Office within 7 business days of the conclusion of the trip.
- f. The credit card charge slip is not considered adequate documentation.

### **2. Violations & Consequences**

The only person authorized to use the credit card is the cardholder who has been issued the card. The credit card is for authorized District purchases only. Inappropriate use of the credit card or failure to

abide by procedures and guidelines will result in appropriate disciplinary action, including, but not limited to, possible termination of employment.

### **3. Gift Cards and Debit Cards**

The LEA does not authorize the use of gift cards or debit cards for purchases with State or local funds. Gift cards or debit cards are not authorized for purchases with Federal grant funds because they do not provide adequate accountability for ensuring allowable use of funds.

## **E. Full and Open Competition**

All procurement transactions (of a single item or multiple quantities of the same item, e.g. laptops) must be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process.

EDGAR further requires the following to ensure adequate competition.

### **1. Geographical Preferences Prohibited**

The LEA must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Texas Education Code (TEC) 44.042 requires the following geographical preferences:

- a. LEAs that purchase agricultural products shall give preference to those produced, processed, or grown in Texas if the cost to the LEA is equal and the quality is equal. TEC 44.042(a).
- b. If agricultural products produced, processed, or grown in Texas are not equal in cost and quality to other products, the LEA shall give preference to agricultural products produced, processed, or grown in other states of the United States over foreign products if the cost to the LEA is equal and the quality is equal. TEC 44.042(b).

- c. An LEA that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the LEA is equal and the quality is not inferior. TEC 44.042(c).
- d. An LEA may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in Texas. TEC 44.042(f).
- e. For the purposes of TEC 44.042:
  - i. "Agricultural products" includes textiles and other similar products.
  - ii. "Processed" means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form. TEC 44.042(g).

TEC 44 is applicable to ISDs and any charter schools that adopt Chapter 44.

## **2. Prequalified Lists**

The LEA must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the LEA must not preclude potential bidders from qualifying during the solicitation period.

The Program Administrator is responsible for ensuring the standards and elements described above are met.

## **3. Solicitation Language**

The LEA must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. 2 C.F.R §200.319(c).

The Program Administrator is responsible for ensuring the standards and elements described above are met.

## **F. Federal Procurement System Standards**

### **1. Avoiding Acquisition of Unnecessary or Duplicative Items 2 CFR §200.318(d)**

The LEA must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration is given to consolidating or breaking out procurements to obtain a more economical purchase. And, where appropriate, an analysis must be made of leases versus purchase alternatives, and other appropriate analyses to determine the most economical approach.

These considerations are given as part of the process to determine the allowability of each purchase made with Federal funds.

Please see page 24 for procedures on determining allowability.

### **2. Use of Intergovernmental Agreements 2 CFR §200.318(e)**

To foster greater economy and efficiency, the LEA enters into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

### **3. Use of Federal Excess and Surplus Property 2 CFR §200.318(f)**

The LEA may consider the use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

### **4. Debarment and Suspension 2 CFR §200.212**

The LEA awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The LEA may not subcontract with or award sub-grants to any person or company who is debarred or suspended. Purchasing Coordinator is required to check for excluded parties at the System for Award Management website before any procurement transaction. This list is located at: <http://www.sam.gov/>

### **5. Maintenance of Procurement Records 2 CFR §200.318(h)(i)**

The LEA must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

Please see page 87 for more information on the LEA's record policies.

## **6. Time and Materials Contracts 2 CFR §200.318(h)(i)(1-2)**

The LEA may use a time and materials type contract only (1) after a determination that no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the LEA is the sum of: the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the LEA must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

## **7. Settlements of Issues Arising Out of Procurements 2 CFR §200.318(k)**

The LEA alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the LEA of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

## **8. Protest Procedures to Resolve Dispute**

The LEA maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency. Complaints are handled in accordance with New Braunfels ISD policy GF (LOCAL).

# **G. Conflict of Interest Requirements**

Employees should not use their position with the LEA to attempt to sell products or services.

Employees shall not recommend, endorse, or require students to purchase any product, material or service in which the employee has a financial interest or that is sold by a company that employs or retains the LEA employee during non-school hours.

## **1. Standards of Conduct (Conflicts of Interest) 2 CFR §200.318(c)(1)**

In accordance with 2 CFR §200.318(c)(1), the LEA maintains the following 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 LEA defines “immediate family” as: spouse; son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands in loco parentis; parent, stepparent, parent-in-law, or other individual who stands in loco parentis to the employee; sibling, stepsibling, and sibling-in-law; or grandparent and grandchild.

The LEA defines “partner” as a business relationship or connection between two or more parties based on commercial activity of one of the parties.

The LEA defines “financial or other interest” as: ownership of ten percent or more of the voting stock or shares of the business entity; ownership of ten percent or more of the fair market value of the business entity; ownership of \$15,000 or more of the fair market value of the business entity; funds received from the business entity exceed ten percent of the employee’s, officer’s or agent’s gross income for the previous year; real property is involved and the employee, officer or agent has an equitable or legal ownership with a fair market value of at least \$2,500.

The officers, employees, and agents of the LEA may neither solicit nor accept gifts, gratuities, favors, services, benefits, or anything of monetary value from contractors or parties to subcontracts that could reasonably be construed to influence the person’s discharge of assigned duties and responsibilities, unless the gift is an unsolicited item of nominal value (\$100 or less). Officers, employees, and agents of the LEA may accept gifts that are of nominal value given for the purpose of advertising, ceremonial occasions or official events. Nominal value is defined as \$100 or less.

a. Mandatory Disclosure to the LEA

The employee shall disclose in writing to his or her immediate supervisor (who in turn will notify the Purchasing Coordinator in writing) a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a real or potential conflict of interest with the proper discharge of assigned duties and responsibilities or that creates a potential conflict of interest with the best interest of the LEA. In the case that the individual receiving the report is also involved in the potential conflict, the disclosure should be submitted to the Assistant Superintendent.

The officer or agent of the LEA shall disclose in writing to the CFO a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a real or potential conflict of interest with the proper discharge of assigned duties and responsibilities or that creates a potential conflict of interest with the best interest of the LEA. In the case that the individual receiving the report is also involved in the potential conflict, the disclosure should be submitted to the Assistant Superintendent.

b. Removal from the Procurement Transaction

An employee, officer or agent shall be recused from a procurement transaction if there is a conflict of interest. At a minimum, documentation showing that the employee, officer or agent has properly recused him or herself from the procurement transaction is included in the bid documentation. Documentation shall be maintained by the Purchasing Department and involve the Purchasing Coordinator, Executive Director of Human Resources and the CFO, as applicable.

Each employee, officer, and agent of the LEA will be made aware of the conflict of interest policy in the employee handbook.

The LEA must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity (TEA) in accordance with applicable Federal awarding agency policy. The LEA's Conflict of Interest policy will align with the USDE's conflict of interest policy once it has been released. 2 CFR §200.112.

## **2. Purchasing Code of Ethics**

There are certain common standards of ethics that govern the conduct of employees involved in the purchasing function, as follows:

- a. It is a breach of ethics to attempt to realize personal gain through public employment with the school district by any conduct inconsistent with the proper discharge of the employee's duties.
- b. It is a breach of ethics to attempt to influence any public employee of the school district to breach the standards of ethical conduct set forth in this code.
- c. It is a breach of ethics for any employee of a school district to participate directly or indirectly in procurement when the employee knows that:
  - The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
  - A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
  - If a school district board member or other official has a substantial interest in procurement, that person shall abstain from discussion and decisions regarding the award of the procurement contract (Local Government Code, Chapter 171,) for definition of substantial interest.) In addition, the board member should disclose this substantial interest by filing an affidavit with the district.
- d. It is a breach of ethics to offer, give or agree to give any employee or former employee of the school district, or for any employee or former employee of the school district to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement

standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government. Acceptance of gratuities may be construed as a criminal offense.

- e. It is a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract of a school district, or any person associated therewith, as an inducement for the award of a subcontract or order.
- f. It is a breach of ethics for any employee or former employee of the school district to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

For a definition of the penalties, go to [Texas Education Code – Subchapter B. -Sec. 44.032 and](#) Local Government Code 271.029.

### **3. Organizational Conflicts 2 CFR §200.318(c)(2)**

The LEA does not have a parent, affiliate, or subsidiary organization.

### **4. Disciplinary Actions**

Penalties, sanctions, or other disciplinary actions for violations of standards of conduct will be in accordance and to the extent permitted under state and local law. The District may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with the standards of conduct.

### **5. Mandatory Disclosure 2 CFR §200.113**

Upon discovery of any potential conflict of interest and all violations of Federal criminal law involving fraud, bribery, or gratuity violations, the LEA will disclose in writing the potential conflict or violation of Federal criminal law to the Federal awarding agency or pass-through entity (TEA) in accordance with applicable Federal awarding agency policy. The LEA will follow the USDE's policy once it has been released.

## **H. Contract Administration**

The LEA maintains the following oversights to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Deliveries are received at the campus or department, where they are:

- Check items for damage.
- Pull the purchase order from ITCCS and match the PO with items received. The receiving copy of the PO is stamped and dated when received.

- The campus/department administrative assistant will notify the end user of delivery and will forward the receiving copy of the PO to the Accounts Payable Specialist within the Business Office in order for payment to be made.

For services, the contract originator shall be directly responsible to ensure that the contracting party performs the services covered by the contract. When an invoice is received by the Business Office, it will be held until the receiving copy of the PO is forwarded to the Business Office to certify that the work was completed to the terms of the contract. Once the invoice and receiving copy of the PO is secured in the Business Office, with all applicable signatures, the Accounts Payable Specialist will make payment.

Contract packets will be submitted to the Business Office for review. After review, contracts will be signed by the Superintendent or their designee. All contracts and service agreements, etc. must be signed by the Superintendent or designee. Only the Superintendent or designee is authorized to sign a contract or agreement on behalf of the LEA. Contracts that exceed \$25,000 shall be approved by the the School Board except as otherwise provided in Policy CH (LOCAL).

An employee who signs a contract or agreement without proper authorization will be personally liable for the terms of the contract or agreement and the act may be grounds for termination of employment.

The Business Office maintains a copy of the signed contract, agreement, or purchase order for services performed.

All contracts or agreements (including MOUs, inter-local agreements, etc.) describe conditions under which the contract may be terminated for cause or for convenience by the LEA, including the manner by which it will be effected and the basis for settlement. Appendix II to 2 CFR Part 200.

Contracts for more than the simplified acquisition threshold (\$25,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Appendix II to 2 CFR Part 200.

If the contract is to develop materials, concepts, or products, the agreement or contract contains provisions that protect and retain ownership of such materials, concepts, or products by TEA, the State of Texas, and the Federal government, as applicable (including copyright, patent, trademark).

The Director of Facilities and/or the CFO will maintain evidence that awards were made only to contractors or consultants possessing the ability to perform successfully under the terms and conditions of the proposed contract or procurement. Otherwise, the end user shall provide a signed statement that the contractor or consultant was selected based on demonstrated competence, qualifications, experience, and reasonableness of costs and that consideration was given to contractor integrity, compliance with public policy, past performance, and financial and technical resources.

The Business Office or Facilities Department maintains evidence that consultants were selected based on demonstrated competence, qualifications, experience, and reasonableness of costs and that consideration was given to contractor integrity, compliance with public policy, past performance, and financial and technical resources. Otherwise, the end user shall provide a signed statement that reflects this criteria.

No Federally funded contracts are entered into with employees of the LEA.

The Purchasing Department maintains evidence within the bid packet (i.e., Conflict of Interest Statements, selection committee membership, etc.) that an employee did not participate in selection or award of a contract if a conflict of interest was involved.

## **1. Rental/Usage of Facilities**

The CFO or designee will coordinate the rental/usage of LEA facilities with applicable campuses and departments. A Rental Agreement is required for all rentals of facilities by outside organizations. All contracts will include security deposits (unless waived), charges for facility usage, custodial services, and other related charges, if applicable. The CFO is authorized to waive security deposits.

## **2. Procedures for Submitting a Consultant Service Contract**

Consultant service contracts (either the NBISD services agreement or the vendor/contractor's contract) must have campus/department administrator approval and shall be forwarded to the Business Office for review. In addition to the service agreement, documentation includes the: Scope of Services, Felony Conviction Notice, Criminal History Record Information Review, Debarment Form, Conflict of Interest Questionnaire, and W-9. Documentation of insurance, such as general liability, workers compensation, and auto liability may be needed as applicable.

The Business Office will review the contract and attempt to resolve any deficiencies, if applicable.

Final approval of the contract will be executed by the CFO, Superintendent, and/or School Board.

Upon receipt of the original signed contract, the Business Office shall notify the requestor by email of the contract approval/disapproval, and file the original contract. The requestor shall then submit a copy of the approved contract with the purchase requisition.

The contract originator will ensure that contractors, consultants, service providers, and vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Prior to disbursement of funds to a contractor, consultant, service provider, or vendor, documentation must be provided to the Accounts Payable Specialist to support the goods or services rendered.

Invoice documentation includes, but is not limited to: Description of the goods or services rendered; Dates; Rate; Total Hours, if applicable; Number of students served or names of students served, if applicable.

When procuring contracted services with Federal funds, the Program Administrator will ensure that every purchase order or contract includes language to ensure services align with allowable use of grant funds, if applicable.

### **3. Accountability**

The LEA ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts and/or purchase orders.

The LEA obtains written contracts and/or purchase orders.

Contracts for services include a description of the services to be performed, the date(s) the services will be performed, the location(s) of where the services will be performed, the number or type of beneficiaries to be served, if applicable, and when payment(s) will be made, specifying completion before payment. The terms of the contract will include language that assures the activities performed by the contractor are allowable activities according to the Federal program, if applicable.

Purchase orders for goods include a description of the goods to be delivered, the location(s) of where the goods will be delivered, and when payment(s) will be made, specifying completion before payment.

Invoices match the contracts and/or purchase orders, including a description, date(s) and location(s) of services performed by the contractor or goods delivered by the vendor, and if applicable, the number of beneficiaries served.

The contract originator verifies that the services were performed or the goods were received before submitting the invoice to the Business Office. The contract originator will sign off on the receiving copy of the PO, or initial the invoice to be paid if an open PO is being used. The Accounts Payable Specialist issues payment after all documentation is received from the contract originator. Invoices that merely state “for services rendered” will not be approved for payment. Invoices for services provided to students must indicate the number of beneficiaries served, if applicable.

The Business Office maintains evidence that payment was made only after the service was performed or goods received, and not before. Advance payment to contractors is prohibited.

### **4. Recommended Language for Contracts with Federal Funds**

The Texas Education Agency (TEA) requires all professional services contracts be effective only during the period of availability of funds identified in the Notice of Grant Award (NOGA). In negotiating contracts prior to the effective date of a NOGA/Grant Award Notice (GAN), the LEA will implement one of the following options:

- a. Option 1: A letter of intent to contract with a third party may be signed prior to the issuance of a NOGA/GAN.
  - i. The letter of intent should contain a provision that the future contract is contingent upon receipt of the specific NOGA/GAN.
  - ii. Execute the contract after the NOGA/GAN is issued, as noted in Option 2 steps (b-j) below.

b. Option 2: The contract should contain the following provisions:

- i. The contract is only effective upon receipt by the sub-grantee of the NOGA from the awarding agency.
- ii. The contract period is aligned to the grant period of availability as stated on the NOGA from the awarding agency (period of availability).
- iii. All services will be completed during the effective dates of the contract.
- iv. All services will be invoiced monthly after services are received (rather than paid lump sum at the beginning of the period of availability before services are rendered) and paid upon verification of receipt of services.
- v. The regulations for procurement in 2 CFR §§200.318-323 are followed in issuing the contract.
- vi. All professional services provided under the contract will follow the provisions of 2 CFR §200.459 Professional service costs.
- vii. The contract identifies the funding sources that will be charged for the services provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source.
- viii. The contract identifies and lists only reasonable, necessary, and allocable services to be provided during the period of availability of the funding sources listed in the contract.
- ix. The administrative costs charged to the grant in the contract must comply with any limitations for administrative costs for funding sources (if applicable).
- x. The contract specifies that the invoice provided by the contractor will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.

### **III. PROPERTY MANAGEMENT SYSTEM**

#### **A. Property Classifications**

##### **1. Equipment**

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the LEA for financial statement purposes, or \$5,000. 2 CFR §200.33.

The LEA's established capitalization threshold is \$5,000.

## **2. Supplies**

Supplies means all tangible personal property other than those described in §200.33 Equipment.

A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the LEA for financial statement purposes or \$5,000, regardless of the length of its useful life. 2 CFR §200.94. The LEA's established capitalization threshold is notated above in the Equipment definition.

## **3. Computing Devices**

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. 2 CFR §200.20.

## **4. Capital Assets**

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

- Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and
- Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). 2 CFR §200.12.

## **B. Inventory Procedure**

Inventory is received at the campus or department. The campus or department inspects the property to make sure it's in good condition and that it matches what is listed on the purchase order and packing slip.

The following items are tagged by the Technology Department and the information is entered into the inventory software.

- Technology equipment and software equal to or greater than \$500 and technology items subject to inventory control that cost less than \$500.
- All other non-consumable items equal to or greater than \$500 and all other items subject to inventory control that cost less than \$500.

The technology department is responsible for configuring, distributing and/or installing all technology equipment and/or computing devices.

ITCCS generates a receiving report. From the campus or department the receiving report is sent to the Business Office when the item is received.

## **C. Inventory Records**

For each equipment and computing device purchased with Federal funds, the following information is maintained in the LEA's fixed asset inventory software:

- Description of the property;
- Serial number or other identification number;
- Source of funding for the property;
- Acquisition date and cost of the property;
- Percentage of Federal participation in the project costs for the Federal award under which the property was acquired;
- Location of the property; and
- Any ultimate disposition data including the date of disposal and sale price of the property.

In the event the property is sold, lost or stolen, or cannot be repaired, the Fixed Asset Inventory Control Form will be completed for inventory adjustment.

## **D. Physical Inventory**

A physical inventory of the property must be taken and the results reconciled with the property records annually.

### **1. Fixed (Capital) Assets**

Fixed (Capital) assets are tracked and recorded on the LEA's inventory system by the Business Office. A physical inventory is performed annually by a contracted third party and the results are reconciled with inventory records and the general ledger by the CFO. All missing items are investigated by the campus/department head. Fixed (Capital) assets that are missing, obsolete, damaged beyond repair, etc. are reported to the Business Office and are marked as such in the inventory system. Items purchased with Federal or State grant funds that are to be removed from inventory (for whatever reason) shall be reported to the CFO on the Fixed Asset Inventory Control form for proper reporting to regulatory authority. Items on the inventory list may not be moved or disposed of without approval from the Program Administrator.

Within five business days of a District investigation in which property is determined to be stolen, a police report must be filed by the person who reported the item as missing. A copy of the police report must be submitted to the Technology Department.

### **2. Supplies and Computing Devices**

The technology department and department personnel will track supplies and computing devices that technically are not required to be inventoried, but must be safeguarded and tracked. Annually, after physical inventory and reconciliation is performed, a list shall be generated, by the Program Administrator, of items purchased with Federal and State grant funds. The Program Administrator will review the list to ensure the items are still being used for the intended purpose of the grant program. Any discrepancies shall be noted on the form, and the signed form shall be returned to The Business Office.

## **E. Maintenance**

In accordance with 2 CFR 200.313(d)(4), each campus/department within the LEA is responsible for maintaining property in good condition. Property is maintained and monitored by the appropriate district personnel. Equipment that is damaged or broken is reported to the appropriate department head for repairs. Property that is not repairable may be prepared for auction or disposal.

## **F. Lost or Stolen Items**

The LEA maintains a control system that ensures adequate safeguards are in place to prevent loss, damage, or theft of the property (See D. Physical Inventory).

Upon discovery, lost, stolen or missing items should be reported to the appropriate department within five days. Reference Fraud and Financial Impropriety under the Employee Conduct and Welfare section of the NBISD Employee Handbook.

Specifically for technology, due to its likelihood of theft:

- An annual inventory is performed on all technology equipment by a third party vendor and the Technology Department.
- Technology equipment such as laptops and iPads are allowed to be taken off-site by staff members and students once checked out properly.
- Staff members and students must check out equipment through the technology department.
- Staff members may check-out their NBISD laptop and iPad for the summer.
- All technology assets (equipment over \$500 or easily stolen) are barcoded with an NBISD inventory tag by the technology department.
- All individually assigned iPads are secured through Apple's Device Enrollment Program and tracked through Apple's iCloud Find My iPad app.
- Lost/stolen items are reported to campus administration or the Technology Department.
- Within five business days of the District investigation in which property is determined to be stolen, a police report must be filed by the person who checked it out and was responsible for the item. Copies of which must be submitted to the Technology Department and Business Office.
- Interviews are conducted, if administratively necessary, by the Technology Department and/or campus administration.
- Property is marked lost/stolen in the inventory system, but not deleted, by the Technology Department.

## **G. Use of Equipment 2 CFR §200.313**

Equipment must be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the LEA will not encumber the property without prior approval of the Federal awarding agency and the pass-through entity. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority: activities under a Federal award from the Federal awarding agency which funded the original program or project; then (2) activities under Federal awards from other Federal awarding agencies. 2 CFR §200.313(c)(1).

Notice of equipment available for transfer is disseminated by the Business Office. The Fixed Asset Inventory Control Form must be completed and signed by campus/department designee of the originating campus/department for any equipment or fixed asset being transferred. The form is then sent to the receiving campus/department for signature by the campus/department designee. The original form with both signatures is forwarded to the Business Office for proper recording of the changes and updates to inventory records.

### **1. Transfer of Equipment for Federal Grants Where TEA is the Pass-Through Entity**

All disposition of equipment and surplus supplies, including transfer of equipment, require approval by TEA, regardless of the dollar amount of the current fair market value. The LEA will use the required TEA disposition form, available on the TEA website, to seek disposition approval prior to the actual transfer of the equipment.

### **2. Transfer of Equipment for Direct Federal Grants**

All dispositions of equipment and surplus supplies, including transfer of equipment, will be handled according to the applicable Federal guidelines.

### **3. Current Use of Equipment Shared with Other Projects or Programs 2 CFR §200.313(c)(2-3)**

During the time equipment is used on the project or program for which it was acquired, the equipment will also be made available for use on other projects or programs currently or previously supported by the Federal government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. The Program Administrator will ensure shared usage will not interfere with the project or program for which it was originally acquired and that there are no Federal programs with more restrictive rules that would not allow shared usage. First preference for other use must be given to other programs or projects supported by the Federal awarding agency that financed the equipment. Second preference is given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-Federally funded programs or projects is also permissible.

User fees should be considered if appropriate. However, the LEA must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal government retains an interest in the equipment. If it is determined that a usage fee will be charged, the Program Administrator will perform a cost analysis to determine the amount private companies charge for equivalent services. The Business Office will track the revenue and ensure it is credited to the proper grant program.

## **H. Disposal of Equipment 2 CFR §200.313(e)**

When it is determined that original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, the Program Administrator will contact the awarding agency (or pass-through for a state-administered grant) for disposition instructions.

All dispositions of equipment and surplus supplies require approval by TEA, regardless of the dollar amount of the current fair market value. The LEA will use the required TEA disposition form, available on the TEA website, to seek disposition approval prior to the actual disposition of the equipment/supplies. (For direct Federal grants, all dispositions of equipment and surplus supplies, will be handled according to the applicable Federal guidelines.) Reasons for removal may include that the equipment is no longer operable, was destroyed, was stolen, or is no longer needed.

The Program Administrator is responsible for requesting and submitting the disposition request to TEA or the appropriate Federal entity.

Generally, disposition of equipment is dependent on its fair market value (FMV) at the time of disposition. If the item has a current FMV of \$5,000 or less, it may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency, after receiving approval by TEA. If the item has a current FMV of more than \$5,000, the Federal awarding agency is entitled to the Federal share of the current market value or sales proceeds.

If acquiring replacement equipment, the LEA may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

If the LEA chooses to sell the equipment, the Business Office is responsible for the process.

Approved equipment may be sold under one of the following conditions:

- By competitive bidding through the Business Office. At least two offers must be received.
- By negotiated bid for items valued under \$5,000 as approved by the Business Office.
- By a public auction.

If the Federal awarding agency is entitled to the Federal share of the current market value or sales proceeds, the Business Office is responsible for the accounting and submittal of the funds.

Every effort should be made to determine if a need for the equipment exists anywhere in the LEA before a sale or trade is allowed. The Business Office is responsible for determining the appropriate method of disposition. Equipment considered as surplus and/or unfit for further economical usage (including scrap material) may be transferred to the Warehouse for temporary storage or for ultimate disposition.

## **1. Sale of Surplus Property**

All supplies and equipment which are deemed to be surplus (not of any use to the LEA), will be recommended to the Superintendent or designee for sale via auction. Auctions will be scheduled as needed. If the supplies or equipment were originally purchased with federal funds, approval of disposition must first be received from TEA.

Auctions may be advertised in the local newspaper. The LEA may also use an online auction service for surplus property sales.

The Business Office is responsible for the administration of auctions.

Neither LEA supplies, nor equipment, shall be sold or conveyed other than via auction, unless authorized by the Superintendent or designee.

## **I. Control of Property, Equipment, Supplies Placed in a Private School for Equitable Services**

Property, equipment and supplies placed at a private school to fulfill the ESSA and IDEA-B requirements to provide equitable services to parentally-placed private school children remain the property of the LEA. The district will control and administer the funds used to provide equitable services and will hold title to and administer materials, equipment, and property purchased from Federal funds for the provision of equitable services.

The district will ensure the property, equipment and supplies placed in the private school:

- Are used only for the purposes of the provision of equitable services,
- Are placed in the private school only for the period of time needed to provide equitable services,
- Are removed when no longer needed for the provision of equitable services,
- Are removed when needed to avoid unauthorized use,
- Are removable without remodeling the facility.

Inventory tags with the name of the school district are utilized to ensure proper identification of the district's property being placed temporarily in the private school.

The Program Administrator is responsible for ensuring the proper administration of property, equipment, and supplies placed in a private school for the provision of equitable services.

## **IV. WRITTEN COMPENSATION POLICIES**

### **A. Time and Effort 2 CFR §200.430(i)**

#### **1. Time and Effort Standards**

All employees who are paid in full or in part with Federal funds must keep specific documents to demonstrate the amount of time they spent on grant activities. This includes an employee whose salary is paid with state or local funds but is used to meet a required "match" in a Federal program. These documents, known as time and effort records, are maintained in order to charge the costs of personnel compensation to Federal grants.

Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

- Be supported by a system of internal controls which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
- Be incorporated into official records;
- Reasonably reflect total activity for which the employee is compensated, not exceeding 100% of compensated activities;
- Encompass both Federally assisted and all other activities compensated by the LEA on an integrated basis;
- Comply with the established accounting policies and practices of the LEA and

- Support the distribution of the employee's salary or wages among specific activities or costs objectives.

## **2. Time and Effort Procedures**

Despite the lack of specific rules requiring certain signatures or certain periods of certification, it's very possible that auditors may interpret the requirement that records "must be supported by a system of internal controls which provides reasonable assurance" as including the need for certain signatures or periods of certification. Because of that uncertainty, it is generally recommended there be no changes to LEA's time and effort system if the LEA believes they are in compliance with the previous rules until auditors begin to interpret these new standards.

All personnel paid with Federal funds are subject to Time Distribution Reporting to ensure that Federal program funds are used to pay only their proportionate share of personnel costs. The reporting must demonstrate that an employee paid with Federal funds actually worked on that specific Federal program or cost objective.

The type of time distribution report required is dependent on whether the employee works on a single cost objective or multiple cost objectives and whether the LEA elects to use the Substitute System of Time and Effort Reporting authorized by TEA.

A cost objective is a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred. For example, a single cost objective can be a single function or a single grant or a single activity.

Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards are also subject to the Time Distribution Reporting requirement.

Contractors are not subject to the Time Distribution Reporting requirement.

- a. Single Cost Objective (Periodic/Semi-Annual Certification). Applies to employees who work solely (100% of their time) on a single Federal award/grant program or cost objective.

Charges for their salaries and wages must be supported by Periodic (Semi-Annual) Certifications that certify the employee worked solely on that program/single cost objective for the period covered by the certification.

The Periodic (Semi-Annual) Certification must be prepared at least semi-annually and signed after-the-fact.

The Periodic (Semi-Annual) Certification must be signed by the employee or by the supervisor having first-hand knowledge of the work performed by the employee.

The Periodic (Semi-Annual) Certifications are submitted for the time periods of January through June and July through December, or September through February and March through August.

The Periodic (Semi-Annual) Certifications are submitted to the Program Administrator.

The Periodic (Semi-Annual) Certifications are reviewed semi-annually by the Program Administrator for accuracy and compliance with Federal requirements.

Appendix A of this manual provides a sample of the Periodic (Semi-Annual) Certification form.

- b. Multiple Cost Objectives (Time and Effort Personnel Activity Reports – PARs) Applies to employees who do not work 100% of their time on a single Federal award/grant program or single cost objective but instead work under multiple grant programs or multiple cost objectives.

A distribution of their salaries or wages must be supported by Personnel Activity Reports (PARs).

The PARs must reflect an after-the-fact distribution of the actual activity of the employee and must account for the total activity for which the employee is compensated.

The PARs must be prepared at least monthly and must coincide with one or more pay periods.

The PARs must be completed and signed after-the-fact.

The PARs must be signed by the employee. The supervisor may sign in addition to the employee, but the signature of the supervisor alone is not sufficient for documentation.

The PARs are submitted monthly to the supervisor for review of accuracy and compliance with Federal requirements, who then forwards to the Program Administrator for final approval and cost reconciliation.

Appendix B of this manual provides a sample of the PAR.

- c. Substitute System for Time and Effort Reporting for Employees Supported by Multiple Cost Objectives

The LEA does elect to use the Substitute System for Time and Effort Reporting in lieu of the Personnel Activity Report (PAR) for eligible employees supported by multiple cost objectives.

The Substitute System of Time and Effort Reporting is used in lieu of the Personnel Activity Report (PAR) for eligible employees who are supported by multiple cost objectives, have a predetermined schedule, and do not work on multiple activities or cost objectives at the exact same time on his or her schedule.

If the employee's schedule is not consistent from week to week, but changes regularly, that particular employee is not eligible to use the Substitute System but must submit monthly PARs instead.

If the employee is eligible to use the Substitute System, the employee must complete the TEA-approved Employee Schedule and Certification form on a semi-annual basis, at a minimum.

If the employee's predetermined schedule changes substantively (by more than 10%) during the year, the employee must complete and submit an updated Employee Schedule and Certification form.

The Employee Schedule and Certification form must be completed and signed after-the- fact.

The Employee Certification form must be signed by both the employee and the supervisor having first-hand knowledge of the work performed by the employee.

The Employee Schedule and Certification is submitted for the time periods of January through June and July through December, or September through February and March through August.

The Employee Schedule and Certification form is submitted semi-annually to the supervisor for review of accuracy and compliance with Federal requirements, who then forwards to the Program Administrator for final approval and cost reconciliation.

Charges to the grants must be supported by the Employee Schedule and Certification forms.

The Program Administrator will submit the required LEA Management Certification form to TEA (that notifies TEA of the LEA's election to use the Substitute System) on an annual basis by the deadline established by TEA for each school year in which the Substitute System is implemented.

Appendix C of this manual provides a sample of the Employee Schedule and Certification form.

Appendix D of this manual provides a sample of the LEA Management Certification form.

### **3. Reconciliation and Closeout Procedures**

It is critical for payroll charges to match the actual distribution of time recorded on the monthly certification documents. Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes provided that the system for establishing the estimates produces reasonable approximations of the activity actually performed.

For employees working under multiple cost objectives, budget estimates or other distribution percentages determined before the services are actually performed do not qualify as support for charges to Federal grant awards. However, the budget estimates or distribution percentages may be used for interim accounting purposes, provided that:

- The LEA's system for establishing the estimates produces reasonable approximations of the activity actually performed;
- At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly Time and Effort PARs are made;
- At least semi-annually, comparisons of actual costs to budgeted distributions are made based on the Substitute System's Employee Schedule and Certification forms, if applicable;

- If the cost comparisons show the differences between budgeted and actual costs are less than ten percent, adjustments made to costs charged to Federal awards as a result of the cost reconciliation are recorded annually;
- If the cost comparisons show the differences between budgeted and actual costs are ten percent or more, adjustments made to costs charged to Federal awards as a result of the cost reconciliation are recorded quarterly;
- The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.
- The Program Administrator and Business Office are responsible for performing the cost reconciliation and adjustments.

#### **4. Job Descriptions**

An integral component of an adequate financial management system is the development and maintenance of records documenting the duties and responsibilities of personnel and the employee's acknowledgement of their understanding of their duties and responsibilities.

Beginning with the 2018-2019 school year employee job descriptions are signed and dated by the employee, as acknowledgement that the employee has full knowledge of their duties and responsibilities.

Employee job descriptions must be current. Employee job descriptions are updated as new assignments are made. The Program Administrator and/or employee's supervisor will monitor job descriptions to ensure they are kept up-to-date and that the job descriptions accurately and completely describe the work performed by the specific position. Job descriptions for positions that are split-funded should be reviewed quarterly by the supervisor, at a minimum, to ensure the job description remains current. Human Resources will assist as necessary.

Employee job descriptions for personnel paid from Federal funds must delineate all program or cost objectives under which the employee works. Supervisors must ensure that job descriptions and duties are specific to the particular grant program and clearly identify the functions and programs they benefit, including the fund source(s) from which the position is compensated. The Program Administrator and/or employee's supervisor will ensure the job description aligns the activities of the position to the program goals of the fund source and ties the source of funds to the activity. Human Resources will assist as necessary.

The Program Administrator and/or employee's supervisor will ensure the job description aligns the activities of the position to the program goals of the fund source and ties the source of funds to the activity. Human Resources will assist as necessary.

If a position benefits multiple cost objectives or programs, the job description will clearly define each program, function, and/or fund source and clearly identify and distinguish the duties and responsibilities for each respective program, function, and/or fund source.

If a position benefits a single cost objective or program, the job description will clearly indicate the employee is assigned 100% to the program. If a position that benefits a single cost objective is funded

through multiple sources, a sentence will be added to the job description stating that the position is supported by a single cost objective even though its funding is split among multiple sources.

If a position has administrative duties, the job description will clearly delineate the administrative activities and identify the percentage of administrative activities compared to program activities

## **5. Employee Exits**

Exit interviews are provided electronically online for all employees leaving the district. Personal interviews may be requested through the Human Resources Department.

Separating employees are asked to provide the district with a forwarding address, phone number and email in the event the district needs to contact them after separation. Additionally, they are asked to complete a questionnaire that provides the district with feedback on his or her separation details and employment experience. All district keys, books, property, including intellectual property, and equipment must be returned upon separation from employment.

Any staff member who separates from employment with the LEA will be ineligible to attend any conference, workshop, or convention paid out of any LEA funds, when such attendance occurs after the separation date.

Any staff member who separates from employment with the LEA and attends a conference, workshop, or convention paid out of any LEA funds, when such attendance occurs after the separation date, will be liable for the costs of the conference, workshop, or convention and will not be reimbursed for such costs by the LEA.

The employee's supervisor is responsible for ensuring compliance with this requirement.

## **B. Human Resources Policies**

Employees are paid in accordance with administrative guidelines and an established pay structure. The district's pay plans are reviewed by the administration each year and adjusted as needed. All district positions are classified as exempt or nonexempt according to Federal law. Professional employees and academic administrators are generally classified as exempt and are paid monthly salaries. They are not entitled to overtime compensation. Other employees are generally classified as nonexempt and are paid an hourly wage or salary and receive compensatory time or overtime pay for each overtime hour worked beyond 40 in a workweek.

Before the start of each school year, payroll schedules are posted online by the Payroll Specialist. Employee duty day calendars are posted online by the HR Department. Classroom teachers, full-time librarians, full-time nurses, and full-time counselors will be paid no less than the minimum state salary schedule. Contract employees who perform extracurricular or supplemental duties may be paid a stipend in addition to their salary according to the district's extra-duty pay schedule. Employees should contact the Human Resources Department or the Business Office for more information about the district's pay schedules or their own pay.

If extra-duty is performed a Request for Payroll Supplement (aka “Blue Form”) must be submitted. Forms are available through the campus / department administrative assistant. The extra duty forms must be completed and submitted to the Business Office by the person responsible for approving the supplement. The forms are due completely filled out by the dates outlined on the back of the form. All information must be complete or the supplement cannot be processed and will be held for the next payroll.

Stipends are annualized and paid monthly.

When employees work athletic events, an Athletic Duty Sheet must be completed and submitted to the Business Office by the person responsible for approving the supplement. The forms are due completely filled out by the dates outlined on the back of the form. All information must be complete or the supplement cannot be processed and will be held for the next payroll.

The New Braunfels ISD does not discriminate against any employee or applicant for employment because of race, religion, sex, age, national origin, disability, military status, genetic information, or on any other basis prohibited by law. Employment decisions will be made on the basis of each applicant’s job qualifications, experience, and abilities. Employees with questions or concerns relating to discrimination on any of the bases listed above should contact the Human Resources Department.

Announcements of job vacancies by position and location are posted on the district’s web site at [www.nbisd.org](http://www.nbisd.org)

Individuals receiving retirement benefits from the Teacher Retirement System (TRS) may be employed in certain positions or on a part-time basis without affecting their benefits, according to TRS rules and state law. Detailed information about employment after retirement is available in the TRS publication Employment After Retirement. Employees can contact TRS for additional information by calling 800- 223-8778 or 512-542-6400. Information is also available on the TRS Web Site ([www.trs.state.tx.us](http://www.trs.state.tx.us)).

State law requires the district to employ all full-time professional and administrative employees in positions requiring a certificate and nurses under probationary, term, or continuing contracts. Employees in all other positions are employed at will or by a contract that is not subject to the procedures for non-renewal or termination under Chapter 21 of the Texas Education Code. Full-time professional employees new to the district and employed in positions requiring SBEC certification must receive a probationary contract during their first year of employment. Former employees who are hired after a two-year lapse in district employment or employees who move to a position requiring a new class of certification may also be employed by probationary contract. Probationary contracts are one- year contracts. The probationary period for those who have been employed as a teacher in public education for at least five of the eight years preceding employment with the district may not exceed one school year. For those with less experience, the probationary period will be three school years (i.e., three one-year contracts) with an optional fourth school year if the board determines it is doubtful whether a term or continuing contract should be given.

Full-time professionals employed in positions requiring certification will be employed by term contracts after they have successfully completed the probationary period. The terms and conditions of employment are detailed in the contract and employment policies. All employees will receive a copy of their contract. Employment policies can be accessed on line or copies will be provided upon request.

Employees in professional and administrative positions that do not require certification (such as non-instructional administrators) may be employed by non-chapter 21 contract or at-will. If employed at-will, employment is not for any specified term and may be terminated at any time by either the employee or the district.

All paraprofessional and auxiliary employees, regardless of certification, are employed at will and not by contract. Employment is not for any specified term and may be terminated at any time by either the employee or the district.

Employees are required to disclose in writing to their immediate supervisor any outside employment (including professional services and/or contracted services) that may create a potential conflict of interest with their assigned duties and responsibilities or the best interest of the district. Supervisors will consider outside employment on a case-by-case basis and determine whether it should be prohibited because of a conflict of interest.

The district offers employees paid and unpaid leaves of absence in times of personal need. Employees who expect to be absent for an extended period of more than five days should call the Human Resources Department for information about applicable leave benefits, payment of insurance premiums, and requirements for communicating with the district. State law entitles all employees to five days of paid personal leave per year. Personal leave is available for use at the beginning of the year. A day of earned personal leave is equivalent to the number of hours per day in an employee's usual assignment, whether full-time or part-time. State personal leave accumulates without limit, is transferable to other Texas school districts, and generally transfers to education service centers. Personal leave may be used for two general purposes: nondiscretionary and discretionary.

Many Human Resource and District Policies are referenced in the Employee Handbook. The handbook is neither a contract nor a substitute for the official district policy manual which is also available online. The Handbook is a guide to and a brief explanation of district policies. District policies and procedures can change at any time. For more information, employees may refer to the policy codes referenced in the handbook, confer with their supervisor, or call the appropriate district office. Policy manuals are located on the NBISD website at [www.nbisd.org](http://www.nbisd.org).

## **1. Position Control**

The LEA utilizes internal accounting records for each employee position:

- Requisition to Post Position: Responsibility of Campus/Department Head
- Advertisement of Position: Responsibility of Human Resources Department
- Personnel Recommendation: Responsibility of Campus/Department Head
- Employee Job Description: Responsibility of Campus/Department Head and Human Resources Department
- Begin Hire Form: Responsibility of Campus/Department Head and Human Resources Department
- Internal job postings are the responsibility of Campus/Department Head and Human Resources Department

The Business Office ensures all wage changes and annual salaries and deductions are accurately tracked and recorded, salaries are allocated to the proper general ledger accounts, and payroll taxes and deductions are properly calculated.

## **V. RECORD KEEPING**

### **A. Record Retention**

The LEA maintains all records that fully show (1) the amount of funds under the grant or sub-grant; (2) how the subgrantee uses those funds; (3) the total cost of each project; (4) the share of the total cost of each project provided from other sources; (5) other records to facilitate an effective audit; and (6) other records to show compliance with Federal program requirements. 34 CFR §§76.730-.731 and §§75.730-.731. The LEA also maintains records of significant project experiences and results. 34 CFR §75.732. These records and accounts must be retained and made available for programmatic or financial audit.

The U.S. Department of Education is authorized to recover any Federal funds misspent within 5 years before the receipt of a program determination letter. 34 CFR §81.31(c). Consequently, the LEA retains records for a minimum of five (5) years from the date on which the final Financial Status Report is submitted, unless otherwise notified in writing to extend the retention period by the awarding agency, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs. However, if any litigation, claim, or audit is started before the expiration of the record retention period, the records will

be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 CFR §200.333.

The LEA will utilize the services of a third-party vendor to destroy records in accordance with applicable record retention schedules provided by the Texas State Library and Archives Commission, and updated records inventories will be maintained.

#### **1. State Law Regarding Records Retention**

The Texas State Library and Archives Commission records retention schedules are available at: [www.tsl.state.tx.us/slrn/recordspubs/localretention.html](http://www.tsl.state.tx.us/slrn/recordspubs/localretention.html)

The Government Code, Section 411.158, provides that the Texas State Library and Archives Commission shall issue records retention schedules for each type of local government, including a schedule for records common to all types of local government. The law provides further that each schedule must state the retention period prescribed by Federal or State law, rule of court, or regulation for a record for which a period is prescribed; and prescribe retention periods for all other records, which periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the Commission.

The retention period for a record applies to the record regardless of the medium in which it is maintained. Some records listed in the retention schedule are maintained electronically in many offices, but electronically stored data used to create in any manner a record or the functional equivalent of a record as described in the retention schedules must be retained, along with the hardware and software

necessary to access the data, for the retention period assigned to the record, unless backup copies of the data generated from electronic storage are retained in paper or on microfilm for the retention period. This includes electronic mail (email), websites, and electronic publications.

The use of social media applications may create public records. Any content (messages, posts, photographs, videos, etc.) created or received using a social media application may be considered records and should be managed appropriately. The retention of social media records is based on content and function. Local governments will need to consult the relevant records retention schedule for the minimum retention periods.

Unless otherwise stated, the retention period for a record is in calendar years from the date of its creation. The retention period applies only to an official record as distinct from convenience or working copies created for informational purposes. Where several copies are maintained, each local government should decide which shall be the official record and in which of its divisions or departments it will be maintained. Local governments in their records management programs should establish policies and procedures to provide for the systematic disposal of copies.

A local government record whose retention period has expired may not be destroyed if any litigation, claim, negotiation, audit, public information request, administrative review, or other action involving the record is initiated; its destruction shall not occur until the completion of the action and the resolution of all issues that arise from it.

A local government record whose retention period expires during any litigation, claim, negotiation, audit, public information request, administrative review, or other action involving the record may not be destroyed until the completion of the action and the resolution of all issues that arise from it.

If a record described in the retention schedule is maintained in a bound volume of a type in which pages were not meant to be removed, the retention period, unless otherwise stated, dates from the date of last entry.

If two or more records listed in the retention schedule are maintained together by a local government and are not severable, the combined record must be retained for the length of time of the component with the longest retention period. A record whose minimum retention period on the retention schedule has not yet expired and is less than permanent may be disposed of if it has been so badly damaged by fire, water, or insect or rodent infestation as to render it unreadable, or if portions of the information in the record have been so thoroughly destroyed that remaining portions are unintelligible. If the retention period for the record is permanent in the retention schedule, authority to dispose of the damaged record must be obtained from the Director and Librarian of the Texas State Library and Archives Commission. A Request for Authority to Destroy Unscheduled Records (FORM SLR 501) should be used for this purpose.

## **B. Collection and Transmission of Records**

Records will be maintained either electronically or as paper copies. Records will remain on-site for one year and then moved off-site for the remainder of the applicable retention period. If the applicable record is kept as a paper copy, copies will be provided to awarding agencies either electronically or as paper copies.

If the record is kept electronically, the record will be transmitted electronically to the recipient in accordance with 2 CFR §200.335.

The LEA's records management system establishes a records retention schedule and determines which records are active and should be retained in office space, which records are inactive and should be moved to storage, which records have served their usefulness and may be destroyed, which records are confidential or sensitive and require security measures to restrict access, which records are essential and require backup protection, and which records demonstrate compliance with legal requirements.

In developing the LEA's records retention schedule, the Records Management Officer will ensure it is consistent with the applicable minimum retention schedules adopted by the Texas State Library and Archives Commission, i.e., Local Schedule GR – Records Common to All Governments, Local Schedule EL - Records of Elections and Voter Registration, Local Schedule TX – Records of Property Taxation, and Local Schedule SD – Records for Public School Districts. 13 TAC (Texas Administrative Code) 7.125.

In addition, records that are not listed on the Texas State Library and Archives Commission records retention schedule, but are retained for administrative value, are included in the records management plan, with a retention period identified for each record type.

The LEA may not dispose of a record listed in the applicable retention schedule prior to the expiration of its retention period. The LEA's records control schedule may not set a retention period that is less than that established for the record in the applicable schedule. Original paper records may be disposed of prior to the expiration of their minimum retention periods if they have been microfilmed or electronically stored pursuant to the provisions of the Local Government Code, Chapter 204 or Chapter 205, as applicable, and rules of the Texas State Library and Archives Commission adopted under those chapters. Actual disposal of such records is subject to the policies and procedures of the LEA's records management program.

Even if the legal retention period has expired for a record, the record will not be destroyed if one of the following exists:

- The subject matter of the record is known to be in litigation;
- The record is subject to a pending request for disclosure under the Open Records Act;
- There is an outstanding request to inspect and review the record under the Family Educational Rights and Privacy Act (FERPA);
- The record is subject to a pending audit by a Federal or State granting agency or sub-grantor agency;
- Questions remain unresolved from a conducted audit until audit findings are solved.

The LEA maintains and preserves some original records in electronic format for convenient use and some are stored in paper format. Records stored on microfiche will comply with the requirements established in the Texas State Library's Local Government Bulletin A, Microfilming Standards and Procedures. Records stored on electronic or magnetic media must follow the requirements established in Local Government Bulletin B, Electronic Records Standards and Procedures.

Active records are stored at the campus/department locations. Active records are records that are current or accessed frequently. Inactive records are records that are accessed infrequently or not at all. Inactive records are stored in an offsite contracted warehouse. The records retention schedule will identify all records in storage and their location.

Any person who knowingly or intentionally violates the specific rules for the destruction of records established by the Texas Government Records Act violates the law. According to Section 202.001 of the Texas Government Records Act (Local Government Code 202.001), records may be destroyed if:

- The record is listed on a records control schedule accepted for filing by the Texas State Library and Archives Commission (the Commission) and its retention period has expired or it has been microfilmed or stored electronically in accordance with established requirements;
- The record appears on a list of obsolete records approved by the Commission;
- A destruction request is filed with and approved by the Commission (for a record not listed on an approved control schedule);
- The record destruction or obliteration is directed by an expunction order issued by a district court pursuant to State law;
- The record is defined as exempt from scheduling or filing requirements by rules adopted by the Commission or listed as exempt in a records retention schedule issued by the Commission.

Records may be destroyed by burning, shredding, pulping, burial in a landfill or by sale or donation for recycling purposes, subject to the following exceptions:

- Records to which public access is restricted under Chapter 552, Government Code, or other State law may be destroyed only by burning, pulping, or shredding;
- An LEA that sells or donates records for recycling purposes must establish procedures for ensuring that the records are rendered unrecognizable as local government records by the recycler;
- The Commission may approve other methods of destruction that render the records unrecognizable as local government records.

In conjunction with the Records Management Officer, the Records Management Consultants update LEA records on an annual basis. Any records scheduled for destruction are pulled and recorded by the Records Management Consultants and Records Management Officer or designee, and picked up at a later date for destruction.

No records are destroyed without the approval of the CFO. The Business Office will maintain the confidentiality statement provided by the Records Management Consultants.

The special education department observes Federal and state laws, state regulations and local policies pertaining to the confidentiality of student records. Parents (or an eligible student 18 years or older) may inspect and review records at any time. School officials with a legitimate educational interest have access to student records. The parents of a student with a disability must give written consent before a student's records can be seen by someone not involved in the student's education.

If the student transfers to another school district, special education records will be sent to the receiving district without parental consent.

Special education eligibility and educational records are maintained for five (5) years following the date of the last recorded action for each student served by the Special Education Department of New Braunfels ISD. At the end of five years, the records will be destroyed.

Parent/guardian/adult student has been informed that the District shall retain education records of students with disabilities for five years after the student's graduation or dismissal from special education.

Records with personally identifiable information are located on the campus of the school which the student attends and the Special Education Services office.

If record retention schedules prescribed by the Texas State Library and Archives Commission indicate a retention period that differs from the Federal requirements, the more restrictive retention period will be followed. Since Title IV of the No Child Left Behind (ESSA) – Elementary and Secondary Education Act (ESSA) has no statute of limitations, all records are maintained for that grant program.

### **C. Access to Records**

The LEA provides the awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives the right of access to any documents, papers, or other records of the LEA which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the LEA's personnel for the purpose of interview and discussion related to such documents.

### **D. Privacy**

In order to ensure the personal information of both students and employees is protected by the LEA, protective measures include, but are not limited to: network passwords are forced to change periodically; enterprise firewall in place between LEA and outside entities; both computers and software require passwords in order to grant access; records are maintained in “vaults” and/or locked filing cabinets; visitors/requestors are required to sign in and present identification; public information requests are reviewed for potential FERPA issues and personally identifiable information is redacted prior to release of information.

## **VI.SELF-MONITORING AND AUDIT RESOLUTION**

### **A. Program Evaluation**

The appropriate Program Administrator will monitor Federal grant-supported activities to assure compliance with applicable Federal requirements and to assure that performance goals are being achieved. Actual accomplishments will be compared to the objectives of the program.

Activities for monitoring and evaluating program performance include, but are not limited to:

- Interviews with campus administrators;

- Collaboration with regional Education Service Center staff for training, technical assistance, and consultative services;
- Review of applicable data;
- Leadership team meetings on a regular basis to review program activities

## **B. Monitoring Implementation of Written Policies and Procedures**

The LEA will self-monitor implementation of their written policies procedures through review of all requisitions before approval and by review of all travel reimbursement requests. The Business Office/Program Administrators monitor compliance with written policies and procedures. Policies and procedures are reviewed annually. Employees are required to sign and date that they have read the policies and procedures annually.

## **C. Audit Resolution**

The LEA will review the results of audit and monitoring visits and implement corrective actions. Corrective action plans are written to address findings. The Business Office and appropriate Program Administrator will follow up to ensure the findings are corrected.

# **VII. QUESTIONS TO CONSIDER WHEN DETERMINING ALLOWABILITY OF COST WITH FEDERAL FUNDS LEGAL AUTHORITIES AND HELPFUL RESOURCE**

Fiscal and program staff should refer to this section for a useful framework when performing an analysis of allowability. In order to determine whether Federal funds may be used to purchase a specific cost, it is helpful to ask the following questions:

- Is the proposed cost allowable under the relevant program?
  - Am I familiar with the program-specific statutes and regulations?
  - Have I reviewed the Program Guidelines issued by TEA for this particular grant program?
- Is the proposed cost consistent with program-specific fiscal rules?
  - Does the program have a supplement, not supplant rule?
  - Are there other program-specific fiscal rules that affect this cost item?
- Is the proposed cost consistent with an approved program plan and budget?
  - Have I reviewed the applicable program plan?
  - Is the cost item budgeted in our local budget or does it need to be added?
  - Does the cost require specific approval from TEA?
  - Is the cost item budgeted in the grant application or does it need to be added?
  - If the cost was in the grant application, was the cost approved by TEA?
- Is the proposed cost consistent with specific conditions imposed on the grant (if applicable?)
  - Have I reviewed the NOGA for the grant award to determine specific terms and conditions?
- Is the proposed cost consistent with EDGAR?
  - Is the proposed cost item reasonable?
    - Is it a type generally recognized as ordinary and necessary for the operation of the LEA?
    - Is it a type generally recognized as necessary for the proper and efficient performance of the specific federal program?

- Are sound procurement practices, such as arms-length bargaining, full and open competition standards followed?
- Are you significantly deviating from your locally established practices and policies?
- Is the price consistent with market prices for comparable goods or services for the geographic area?
- Did you perform a cost/price analysis?
- Did you perform a lease vs. purchase analysis?
- Did you consider the use of the federal excess and surplus property in lieu of purchasing new equipment or property?
- Is this the minimum amount I need to spend to meet my need?
- Is this the “Cadillac” version of what I really need?
- Does it pass the prudent person test?
- Is the proposed cost item necessary?
  - Is it needed for the proper and efficient performance of the grant program?
  - Does it address program-specific goals and objectives?
  - Is it aligned with identified needs based on results and findings from a needs assessment?
  - Is it aligned with identified needs based on program data?
  - Have you reviewed the Campus Improvement Plan and/or District Improvement Plan and Comprehensive Needs Assessment?
  - Is there an educational benefit associated with the cost?
  - Is it identified in your program plan?
  - Is it identified in the budget and grant application?
  - Do I really need this or is it just nice to have?
  - Do I have the capacity to use what I am purchasing?
  - Would this be a duplicate item of something we already have?
  - If I were asked to defend this purchase, would I be able to?
- Is the proposed cost item allocable to the federal award?
  - Is the cost incurred specifically for the federal program?
  - Will the program benefit in proportion to the funds charge to the program?
- Does the proposed cost item confirm to any limitations or exclusions set forth in the terms and conditions of the federal award?
  - Have you reviewed the NOGA, if applicable, to determine terms and conditions of the award?
- Is the proposed cost item consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the LEA?
- Is the proposed cost item accorded consistent treatment?
  - Have you determined whether it would be a direct cost or indirect cost and whether the determination for this type of cost is consistent with like costs in like circumstances?
- Will the accounting treatment of the proposed cost item conform with the generally accepted accounting principles (GAAP)?
- Will the proposed cost item be used as a match or cost-share?
- Have I reviewed the Selected Items of Cost in EDGAR?
- Are any credits being extended that should reduce the amount being allocated to the federal award?
- Do I have a system in place to adequately document the entire procurement cycle of the cost item?

- Do I have a system in place to ensure the expenditure occurs during the grant program performance period?
  - Do I have a system in place to ensure, that once it is purchased and received, personnel who will use the cost item are made aware of its fund source and intended purpose and beneficiaries?
- Are there and state or local rules applicable to this cost item that are more restrictive than federal rules?

## **VIII. LEGAL AUTHORITIES AND HELPFUL RESOURCES**

The following documents contain relevant grants management requirements. Staff should be familiar with these materials and consult them when making decisions related to the federal grant.

Education Department General Administrative Regulations (EDGAR)

<http://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html>

Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200)

<http://www.ecfr.gov/cgi-bin/text-idx?SID=ccccf77e01c9e6d4b3a377815f411704&node=pt2.1.200&rgn=div5>

USDE's Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 3474)

[http://www.ecfr.gov/cgi-bin/text-idx?SID=ccccf77e01c9e6d4b3a377815f411704&tpl=/ecfrbrowse/Title02/2cfr3474\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=ccccf77e01c9e6d4b3a377815f411704&tpl=/ecfrbrowse/Title02/2cfr3474_main_02.tpl)

Federal program statutes, regulations, and guidance

<http://www.ed.gov/>

State regulations, rules, and policies

<http://www.tea.texas.gov>

LEA regulations, rules, and policies

<http://pol.tasb.org/Home/Index/151>

## **IX. CHILD NUTRITION PROCUREMENT GUIDELINES**

NBISD acknowledges the National School Lunch Program (NSLP) follows guidelines often more restrictive than standards covered in EDGAR. In order to cover the possibility of more restrictive guidelines for the NSLP, NBISD is attaching in the appendix Sections 14,17 and 22 of the NSLP's Administrator's Reference Manual (ARM) and recognizes Sections 14,17 and 22 or the ARM as part of this EDGAR manual. Shown in Appendix G.

## **X. APPENDICES**

Appendix A: New Braunfels ISD Semi-Annual Personnel Certification Program Statement – see attached

Appendix B: Sample of Personnel Activity Report (PAR) – see attached

Appendix C: TEA Substitute System of Time-and-Effort Schedule for Employees Supported by Multiple Cost Objectives – see attached

- Appendix D: TEA Management Certification for Substitute System of Time-and-Effort Reporting for Local Educational Agencies – see attached
- Appendix E: State Programs – Allotments are available on the Texas Education Agency Website  
<https://tea.texas.gov/>
- Appendix F: Federal IDEA-B Grant Manual available on the Texas Education Agency Website  
<https://tea.texas.gov/>
- Appendix G: NSLP's ARM Sections 14, 17 & 22 – see attached

## NBISD Semi-Annual Certification Statement

*\*(For Employees working on a single cost objective funded in whole or in part by State/Federal Grants)*

For the period:

☒

July 1, 2018 – December 31, 2018

☐

January 1, 2019 – June 30, 2019

Employee	Program (Title I, II, III, IV SCE, SBE, Perkins)	Campus	Job Title	Signature

I herby certify that the employee(s) listed above worked solely on a single cost objective allowable under the State/Federal program identified above.

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

# NBISD MONTHLY TIME & EFFORT LOG 2018-2019

For The Month Of: August 2018

Name: Sample

Job Title:

	Title I Hours (50%)	SCE Hours (25%)	Local Hours (25%)	Total Hours Worked
DATE				
1				0
2				0
3				0
4				0
5				0
6				0
7				0
8				0
9				0
10				0
11				0
12				0
13				0
14				0
15				0
16				0
17				0
18				0
19				0
20				0
21				0
22				0
23				0
24				0
25				0
26				0
27				0
28				0
29				0
30				0
31				0
TOTAL	0	0	0	0
PERCENT*	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!

Employee's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

By signing above, I hereby certify that the distribution of my activities represents a reasonable estimate of the actual work performed during the period covered in this report.

<b>Name of Employee</b>	
<b>Position Title</b>	
<b>District/Campus(s)</b>	
<b>Schedule for Certification Period</b>	

Complete the fields above. In the program/fund table to the right, select programs from the dropdown lists in fields A-E. Programs not included on the dropdown list may be typed into fields F-G, with the corresponding fund code. Complete each box of the schedule below by selecting the duration of each activity from the dropdown list (in 15-minute increments); typing a brief description of the activity performed; and using the dropdown list to select the letter that corresponds to the program as listed in the program table. If applicable, select the duration of lunch from the dropdown list for each day.

Program/Fund		Minutes	%
A	84.002 – Adult Education—Basic Grants to States - Fund Code 220	135	100%
B	84.287 – Twenty-First Century Community Learning Centers - Fund Code 265	0	0%
C	84.027 – Special Education—Grants to States (IDEA, Part B) - Fund Code 224	0	0%
D		0	0%
E		0	0%
F		0	0%
G		0	0%
H	State/Local (Fund Code 199 or 420)	0	0%
<b>TOTAL MINUTES/TOTAL PERCENTAGE OF TIME:</b>		<b>135</b>	<b>100%</b>

	Monday	Tuesday	Wednesday	Thursday	Friday
<b>Minutes:</b>	15	15	30	15	60
<b>Activity:</b>	Consult w/staff regarding Title I	Consult w/staff regarding Title I	Consult w/staff regarding Title I	Consult w/staff regarding Title I	Consult w/staff regarding Title I
<b>Program:</b>	A	A	A	A	A
<b>Minutes:</b>					
<b>Activity:</b>					
<b>Program:</b>					
<b>Minutes:</b>					
<b>Activity:</b>					
<b>Program:</b>					
<b>Minutes:</b>					
<b>Activity:</b>					
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<b>Program:</b>					
<b>Minutes:</b>					
<b>Activity:</b>					
<b>Program:</b>					
<b>Minutes:</b>					
<b>Activity:</b>					
<b>Program:</b>					
<b>Minutes:</b>					
<b>Activity:</b>	Lunch Break	Lunch Break	Lunch Break	Lunch Break	Lunch Break



Department of Contracts, Grants and Financial Administration  
2018-2019 Management Certification  
Substitute System of Time-and-Effort Reporting for LEAs

Name of LEA

New Braunfels ISD

County-District Number

046901

**Certifications**

In using the substitute system for time-and-effort reporting, the LEA certifies the following:

- ☒ Only eligible employees will participate in the substitute system. To be eligible, employees must meet all of the following criteria:
- a. Currently work on a schedule that includes multiple activities or cost objectives that must be supported by monthly personnel activity reports.
  - b. Work on specific activities or cost objectives based on a predetermined schedule.
  - c. Not work on multiple activities or cost objectives at the exact same time on their schedule.
- ☒ The system used to document employee work schedules includes sufficient controls to ensure that the system is accurate.
- ☒ Any significant deviations from an employee's established schedule (i.e., a difference from the certified schedule of 10% or greater) requires that the employee submit an updated certification.
- ☒ The LEA will maintain a signed and dated Substitute System of Time-and-Effort Certification form and a current, completed schedule for each eligible employee.
- ☒ The LEA will maintain a list of all prior and current employees eligible to participate under the substitute system of time-and-effort reporting.
- ☒ The LEA will maintain a historical and current list of eligible employees participating under this system.
- ☒ The LEA has received and read the sample form developed by TEA for the substitute system of time-and-effort reporting by eligible employees, and it understands the form meets the minimal requirements of TEA auditors.

This certification may be used by auditors and TEA oversight personnel when conducting audits and subrecipient monitoring of the substitute time-and-effort system.

**Disclosures**

Describe any known deficiencies with the system of documenting employee work schedules.

Describe any challenges implementing the substitute system.

**Certification**

Name of Superintendent

David R. Moczygemba

Superintendent Signature and Date

David Moczygemba 8-8-18

## **Section 14**

# **Financial Information Concerning School Nutrition Funds**

# Section 14, Financial Information Concerning School Nutrition Funds

## Section 14 Update Guide

November 7, 2018 Updated *Section 14, Financial Information Concerning School Nutrition Funds* to clarify information on the following topics:

- Audits
- Capital expenditure
- Cognizant agency
- Delinquent and bad debt
- Direct costs
- Excessive fund balance
- Financial report
- Indirect costs
- Maintenance and repair costs
- Revenue
- Teacher retirement system, fringe benefits

April 3, 2018 Updated *Section 14, Financial Information Concerning School Nutrition Funds* to incorporate the following United States Department of Agriculture (USDA) guidance:

- *USDA Memo SP 24-2017, Local School Wellness Policy: Guidance and Q&As* (April 6, 2017)
- *USDA Memo SP 60-2016, Indirect Cost Guidance* (September 30, 2016)

Moved guidance on student account balances to *Section 15, Meal Pricing* and removed from *Section 14, Financial Information Concerning School Nutrition Funds*

Clarified information on the following topics:

- Allowable/Unallowable costs related to the following
  - Fresh Fruit and Vegetable Program
  - Implementation of the local wellness policy
  - Insufficient check charges
  - Meal production related activities
  - Mobile or temporary sites
  - Supplies, expendable items and other supplies
  - Transportation
  - Uniforms
- Capital expense
- Check charges
- Compliance
- Equipment/property disposal
- Financial report
- Indirect cost rate
- Program integrity
- Single audit

March 13, 2017	Updated <i>Section 14, Financial Information Concerning School Nutrition Funds</i> to correct dates.
March 7, 2017	Updated <i>Section 14, Financial Information Concerning School Nutrition Funds</i> to address date typos.
February 23, 2017	<p>Updated <i>Section 14, Financial Information Concerning School Nutrition Funds</i> to incorporate the following United States Department of Agriculture (USDA) guidance:</p> <ul style="list-style-type: none"> <li>– <i>USDA Memo SP 60-2016, Indirect Cost Guidance</i> (September 30, 2016)</li> <li>– <i>USDA Memo SP 58-2016, 2016 Edition: Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation’s Schools</i> (September 19, 2016)</li> <li>– <i>USDA Memo SP 57-2016, Unpaid Meal Charges: Guidance and Q&amp;As</i> (September 16, 2016)</li> <li>– <i>USDA Memo SP 47-2016, Unpaid Meal Charges: Clarification on Collection of Delinquent Meal Payments</i> (July 8, 2016)</li> <li>– <i>USDA Memo SP 46-2016, Unpaid Meal Charges: Local Meal Charge Policies</i> (July 8, 2016)</li> <li>– <i>USDA Memo SP 40, 2016, Updated Guidance: Contracting with Food Service Management Companies</i> (June 2, 2016)</li> <li>– <i>USDA Memo SP 20- 2016, Nonprofit School Food Service Account Nonprogram Food Revenue Requirements</i> (December 23, 2015)</li> </ul> <p>Clarified information on the following topics:</p> <ul style="list-style-type: none"> <li>– Additional Texas financial resource</li> <li>– Bad debt</li> <li>– Cost sharing</li> <li>– Costs, meal accommodation</li> <li>– Costs, translations</li> <li>– Direct and indirect costs</li> <li>– Education Service Provider (ESP)</li> <li>– Nonprogram costs</li> <li>– Regulatory authority</li> <li>– Revenue</li> <li>– Universal free feeding programs</li> <li>– USDA Foods</li> </ul>
April 26, 2016	<p>Updated <i>Section 14, Financial Information Concerning School Nutrition Funds</i> to incorporate the following United States Department of Agriculture (USDA) guidance:</p> <ul style="list-style-type: none"> <li>– <i>2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards</i> (January 1, 2015)</li> <li>– <i>USDA Memo, SP 07-2016, Local Food and Related Activities in Summer Meals with Questions and Answers</i> (November 12, 2015)</li> <li>– <i>USDA Memo SP 02-2016, Questions and Answers on the Transition to and Implementation of 2 CFR Part 200</i> (October 30, 2015)</li> </ul> <p>Clarified information on the following topics:</p> <ul style="list-style-type: none"> <li>– Allowable and unallowable costs</li> <li>– Audit</li> </ul>

- Income to the program, catering
- Excessive fund balance
- Excessive operating balance
- Exclusive contracts
- Financial audit
- Loans
- Locally purchased food
- Nonprogram/program food proportion
- Pass-through entities
- Payroll or employee salary and wage certification and documentation
- Program integrity
- Program revenue
- Records retention

May 4, 2015

Updated *Section 14, Financial Information Concerning School Nutrition Funds* to incorporate the following United States Department of Agriculture (USDA) guidance:

- 2 CFR Part 200 (December 19, 2014)
- *USDA Memo SP 6-2015, Farm to School and School Garden Expenses* (November 12, 2014)
- *USDA Memo SP 7-2015, Assessing Proposed Nutrition Education Costs in the National School Lunch Program and School Breakfast Program* (November 18, 2014)
- *USDA Memo SP 32-2009, School Garden Q&As* (July 29, 2009)

Clarified information on the following topics:

- Allowable, allocable, reasonable, and necessary costs
- Audits
- Cafeteria monitors
- Capital expenses
- Consistent payment practices
- Depreciation
- Equipment use, inventory, and disposal
- Excessive balance
- Expenditures (costs)
- Farm to school, school farm or garden
- Financial audits
  - *Financial Report*
- Indirect costs
- Memberships, subscriptions, or professional publications
- Net Cash
- Nutrition education expenses
- Land purchases
- Loans
- Loss of equipment
- Proportional program/nonprogram revenue

- Record related to employee salaries and wages
- Rental or usage fees
- Revenue
- State matching funds
- Student account balances
- Source of bill payment
- Supplies
- TDA forms
- Unit cost
- Use of facilities for nutrition programs for the elderly
- Utilities
- Vending

August 1, 2014

Updated *Section 14, Financial Information Concerning School Nutrition Funds* to incorporate the following United States Department of Agriculture (USDA) guidance:

- 2 CFR, Part 225
- USDA Memo SP 11-2012, *Guidance on the Food Donation Program in Child Nutrition Programs* (February 3, 2012)
- USDA Memo SP 41-2011, *Child Nutrition Reauthorization 2010: Indirect Cost Guidance* (July 7, 2011)
- 7CFR, Part 3016

Clarified information on the following topics:

- Allowable and Unallowable Costs
- Audit Requirements
- Capital Expenditures
- Compliance
- Definitions that apply to financial issues
- Excessive Fund Balance
- Excessive Operating Balance
- Loans
- Payroll or Employee Salary and Wage Certification and Documentation
- Program Revenue
- Records Retention
- SNP Food Donations
- TDA Forms

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## 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 site name and ID if applicable) in all communication or documentation.

General Contact Information	
<i>Physical Address:</i>	1700 N. Congress, 11th Floor, Austin, TX 78701
<i>Mailing Address:</i>	PO Box 12847, Austin, TX 78711-2847
<i>Phone:</i>	877-TEXMEAL, (877) 839 -6325
<i>Fax:</i>	(888) 203-6593
<i>Email Contact:</i>	<a href="mailto:squaremeals@TexasAgriculture.gov">squaremeals@TexasAgriculture.gov</a>
<i>Website:</i>	<a href="http://www.squaremeals.org">www.squaremeals.org</a>
Email Contact for Issues Related to Applications	
<i>Child &amp; Adult Care Food Program:</i>	<a href="mailto:CACFP.BOps@TexasAgriculture.gov">CACFP.BOps@TexasAgriculture.gov</a>
<i>National School Lunch Program, School Breakfast Program, &amp; Special Milk Program:</i>	<a href="mailto:NSLP-SBP.BOps@TexasAgriculture.gov">NSLP-SBP.BOps@TexasAgriculture.gov</a>
<i>Seamless Summer Option:</i>	<a href="mailto:SSO.BOps@TexasAgriculture.gov">SSO.BOps@TexasAgriculture.gov</a>
<i>Summer Food Service Program:</i>	<a href="mailto:SFSP.BOps@TexasAgriculture.gov">SFSP.BOps@TexasAgriculture.gov</a>
Email Contact for Issues Related to Program Operation	
<i>Capital Expenditures:</i>	<a href="mailto:NSLP-SBP.BOps@TexasAgriculture.gov">NSLP-SBP.BOps@TexasAgriculture.gov</a>
<i>Commodity Operations:</i>	<a href="mailto:CommodityOperations@TexasAgriculture.gov">CommodityOperations@TexasAgriculture.gov</a>
<i>Community Operations (Child &amp; Adult Care Food Program &amp; Summer Food Service Program):</i>	<a href="mailto:Commuinty.Ops@TexasAgriculture.gov">Commuinty.Ops@TexasAgriculture.gov</a>
<i>Local Products:</i>	<a href="mailto:LocalProducts.SquareMeals@TexasAgriculture.gov">LocalProducts.SquareMeals@TexasAgriculture.gov</a>
<i>Procurement, Including Sole Source:</i>	<a href="mailto:CE.ProcurementReviews.BOps@TexasAgriculture.gov">CE.ProcurementReviews.BOps@TexasAgriculture.gov</a>
<i>School Operations (National School Lunch Program, School Breakfast Program, &amp; Special Milk Program):</i>	<a href="mailto:School.Operations@TexasAgriculture.gov">School.Operations@TexasAgriculture.gov</a>
<i>TX-UNPS Direct Certification Direct Verification System:</i>	<a href="mailto:DirectCertification@TexasAgriculture.gov">DirectCertification@TexasAgriculture.gov</a>
Email Contact for CE Flexibility Options	
<i>Breakfast Waiver:</i>	<a href="mailto:SNPWaivers@TexasAgriculture.gov">SNPWaivers@TexasAgriculture.gov</a>
<i>Excessive Balance Plan:</i>	<a href="mailto:School.Operations@TexasAgriculture.gov">School.Operations@TexasAgriculture.gov</a>
<i>Gender Exception:</i>	<a href="mailto:SNPWaivers@TexasAgriculture.gov">SNPWaivers@TexasAgriculture.gov</a>
<i>Grains Exemption:</i>	<a href="mailto:Nutrition@TexasAgriculture.gov">Nutrition@TexasAgriculture.gov</a>
<i>Milk Substitute Notification:</i>	<a href="mailto:Nutrition@TexasAgriculture.gov">Nutrition@TexasAgriculture.gov</a>
<i>RCCI Age/Grade Group Meal Pattern Flexibility:</i>	<a href="mailto:School.Operations@TexasAgriculture.gov">School.Operations@TexasAgriculture.gov</a>
<i>Seamless Summer Operation (SSO) Age/Grade Flexibility:</i>	<a href="mailto:SNPWaivers@TexasAgriculture.gov">SNPWaivers@TexasAgriculture.gov</a>
<i>Child Nutrition Program Requirement Waiver:</i>	<a href="mailto:SNPWaivers@TexasAgriculture.gov">SNPWaivers@TexasAgriculture.gov</a>
<i>Summer Mandate:</i>	<a href="mailto:SNPWaivers@TexasAgriculture.gov">SNPWaivers@TexasAgriculture.gov</a>

9/25/18

# Financial Information

## Concerning School Nutrition Program Funds

School Nutrition Program (SNP) accounts are required to comply with generally accepted accounting principles (GAAP) for federally funded programs as well as accounting and financial requirements that are specific to the SNP.

This section provides information on accounting and financial requirements for the following programs:

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

While the guidance in this section applies to public and charter schools, private schools, and residential child care centers (RCCIs), some types of organizations may have different requirements. Those differences are noted when they apply. However, each type of CE is expected to adopt financial practices that align to all applicable regulatory guidance.

### Information Box 1

#### Guidance on Program Financial Issues

The following federal publications provide detailed guidance on accounting and financial requirements:

- United States Office of Management and Budget (OMB), 2 CFR, Subtitle A, Chapter II, Part 200—*Uniform Administrative Requirements, Costs Principles, and Audit requirements for Federal Awards*, available at [www.ecfr.gov/](http://www.ecfr.gov/)
- United States Department of Agriculture (USDA), *Financial Management—Child and Adult Care Food Program*, 796-2, Rev. 4, available at [www.squaremeals.org](http://www.squaremeals.org)
- United States Department of Agriculture (USDA), *USDA Memo SP 41-2011, Indirect Costs: Guidance for State Agencies and School Food Authorities*, available at [www.squaremeals.org](http://www.squaremeals.org)
- Texas Comptroller of Public Accounts, *State of Texas Contract Management Guide* (September 1, 2016), available at <https://www.comptroller.texas.gov/purchasing/publications/contract-management-guide.php>
- Texas Education Agency (TEA), *Financial Accountability System Resource Guide*, available at [www.tea.texas.gov/Finance\\_and\\_Grants/Financial\\_Accountability/Financial\\_Accountability\\_System\\_Resource\\_Guide/](http://www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/)
- Texas Education Agency (TEA), *Indirect Cost Rate Guidance and Worksheet*, available at [www.tea.texas.gov/Finance\\_and\\_Grants/Grants/Federal\\_Fiscal\\_Compliance\\_and\\_Reporting/Indirect\\_Cost\\_Rates/Indirect\\_Cost\\_Rates/](http://www.tea.texas.gov/Finance_and_Grants/Grants/Federal_Fiscal_Compliance_and_Reporting/Indirect_Cost_Rates/Indirect_Cost_Rates/)
- Institute for Child Nutrition (ICN), *ICN Financial Management Information System*, 2<sup>ND</sup> Edition (2015), available at [www.nfsmi.org/DocumentSearch.aspx](http://www.nfsmi.org/DocumentSearch.aspx)

## Additional Guidance on Financial Issues

CEs may find the following *Administrator's Reference Manual (ARM)*, sections useful to review in addition to the guidance in this section:

- *Section 15, Meal Pricing*
- *Section 16, Confidentiality and Program Integrity*
- *Section 17, Procurement*
- *Section 22, Food Service Contracts*

In order to meet this requirement, contracting entities (CEs) must have an accurate, efficient financial management system that applies sound and consistent management practices that allows CEs to

- Identify all funds received and expended by program.
- Identify the source and application of school nutrition program funds.
- Ensure effective control over, and accountability for, all funds, property, and other assets.
- Provide accurate, current, and complete disclosure of financial and accounting system as required.
- Operate under specific written procedures for determining the allowability of costs.

## Regulatory Authorities

The majority of CEs across Texas are governed by the financial regulations of more than one federal, state, or local agency. If the funds to be used come to the public school or charter school from United States Department of Agriculture (USDA) through the Texas Department of Agriculture (TDA) or the funds come from income from the operation of a Child Nutrition Program (CNP), the CE must follow all applicable USDA regulations. If another governing agency has a more restrictive requirement, the CE must apply that requirement as long as it does not conflict with USDA regulation. This applies to all financial transactions, including procurement.

Private schools and residential child care centers (RCCIs) may fall under the regulatory authority of a wide range of different federal, state, and local agencies. Public schools and charter schools most commonly fall under two federal regulatory funding sources—(1) education funds coming from the United States Department of Education (ED) and the Texas Education Agency (TEA) and (2) food and nutrition funds from the USDA and TDA. Fortunately, funds coming from ED and USDA are both subject to the recently updated Code of

Federal Regulations (CFR), Part 200,<sup>1</sup> so most requirements are the same. However, there are a few conflicts that are stipulated by legislation specific to the program. When the funding source for the activity comes from USDA/TDA or the CE's operation of a CNP, the CE must follow USDA/TDA regulations. CEs need to be aware of this possibility as they design their procedures and processes for handling all financial issues.

## Educational Service Provider (ESP)

If a CE (school district, charter school, private school, or RCCI) has assigned administrative responsibility to an education service provider (ESP)<sup>2</sup> for the operation of all functions, the ESP may be given operational authority; however, the CE must retain responsibility to ensure that all financial requirements for the program are met.

## Program Integrity and Internal Controls

The CE's financial management system must 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.*

This type of financial management system provides safeguards that improve the stewardship of program income and costs and reduces fraud and improper payments by the use of internal controls.

When program integrity is applied to a financial management system, *Internal controls* means a process designed to establish and maintain effective oversight or 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.

The CE's financial management system must have written procedures that describe its (1) method for determining if a cost is allowable, (2) process for making payments, and (3) procurement procedures<sup>3</sup> as well as (4) records that clearly report all financial transactions.

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<sup>1</sup> Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

<sup>2</sup> Authority for ESPs to manage education and other operations for a school district or charter school is given by the Texas Education Agency; authority for an RCCI by the agency with regulatory authority for the RCCI; and authority for private schools by the governing board.

<sup>3</sup> A CE's written process will include procurement. See the *Administrator's Reference Manual, Section 17, Procurement* for additional information on written procurement procedures.

The financial transactions described in this section are also subject to the procurement regulations described in the *Administrator's Reference Manual, Section 17, Procurement*. CEs must also use that guidance in addition to the guidance in this section for their financial transactions.

### **Monitoring Program Integrity**

While there are many practices a CE may implement to promote program integrity, there are state and federal regulations that also require that TDA take an active role in ensuring that all SNPs operate with program integrity. At a minimum, each CE will participate in the following efforts to ensure program integrity.

#### **Administrative Review of SNPs**

Conducted by TDA—TDA reviews the operational practices, including resource management or financial operations, of each CE at least once every three years. Reviews may also be conducted more frequently based upon TDA's risk assessment.

#### **Procurement Review of SNPs**

Conducted by TDA—TDA reviews the CE's procurement practices at least once every three years. Reviews may also be conducted more frequently based upon TDA's risk assessment.

#### **Single Audit of CE's General Accounting Practices**

Administered as required by Texas Education Agency (TEA) and conducted by a third party auditor—The third party auditor assesses the CE's general financial management system, including the financial management of nonprofit school food service account funds, each year. TDA reviews the CE's single audit documentation to ensure that the CE is in compliance with all CNP requirements.

#### **Administrative Financial Review**

Conducted by TDA—TDA reviews the CE's financial management system focusing on financial transactions related to SNP operation at least every three years. Reviews may also be conducted more frequently based upon TDA's risk assessment.

TDA endeavors to conduct each type of review within the same program or fiscal year.

Well-designed internal controls will result in the following qualities:

- Effectiveness and efficiency of operations
  - Trackable method to reconcile all financial transactions, including but not limited to, bank statements and claims
  - Method to maintain accountability for assets
- Reliability of reporting for internal and external use
  - Preparation of reliable financial statements and reports
  - Safeguards for the loss from unauthorized use or disposition of funds, property, and other assets which safeguarded against loss from unauthorized use or disposition which includes, but is not limited to, the following:
    - Segregation of financial duties
    - Restricted access to information, i.e., one person does not control all financial operations without oversight
    - Edit check mechanisms built into all financial managements operations
- Compliance with applicable laws and regulations.
  - Demonstrate compliance with federal, state, and local statutes, regulations, and the terms and conditions of the program award
  - Prompt action when instances of noncompliance are identified including, but not limited to, noncompliance identified in audit findings.

A CE's internal controls are expected to be in compliance with the *Standards for Internal Control in the Federal Government*<sup>4</sup> issued by the Comptroller General of the United States or the *Internal Control Integrated Framework*<sup>5</sup> issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Additional guidance on program integrity is also located in the *Administrator's Reference Manual (ARM), Section 16, Confidentiality and Program Integrity*.

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<sup>4</sup> Available at [www.gao.gov/products/gao-14-704G](http://www.gao.gov/products/gao-14-704G)

<sup>5</sup> Available at [www.coso.org](http://www.coso.org)

# Effective Accounting Systems

CEs must consider the following financial management standards in developing a financial management system:

## Accounting System Qualities

1. Documentation that demonstrates accurate, current, and complete disclosure of the program's financial transactions—including budgeted authorizations, obligations, unobligated balances, assets, liabilities, and expenditures as well as income or revenue
2. Procedures that ensure that no one person has complete control over all aspects of financial transactions
3. Methodology that allows for the comparison of actual expenditures against budgeted amounts

*[NOTE: Any time a projected budget line is within 20 percent of or exceeds 20 percent of the maximum amount projected, the CE must have a method to evaluate the projected amount and see if a correction needs to be made. If a transfer of funds from one cost line to another is warranted, the CE may adjust the projected budget as long as documentation demonstrates where, why, and when funds are moved.]*

## Accounting Practices

4. Procedures that ensure that all costs are necessary, reasonable, allocable, and allowable
5. Procedures that track the source of funds
6. Procedures that track the allocation or planned use of funds
7. Procedures that track the application or use of funds
8. Procedures that track the person who authorized the use of funds to pay expenses

## Audit Practices

9. Procedures that require organization-wide audits, or program specific audits if applicable, to determine, at a minimum, the fiscal integrity of financial transactions and reports, compliance with laws, regulations, and administrative requirements
10. Procedures that ensure that there is a systemic method for assuring timely and appropriate resolution of all audit findings and recommendations, including organization-wide strategies

## 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 or school staff. For this section, the following terms will be used:

<i>Acting on Behalf of CE</i>	Entity or person who has been given the responsibility to take action for the CE.
<i>Allocable</i>	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"> <li>- is incurred specifically for the award/program <u>or</u></li> <li>- benefits both the award/program and necessary work and can be distributed in reasonable proportion to the benefits received <u>or</u></li> <li>- is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.</li> </ul>
<i>Allowable</i>	Direct or indirect costs that may be paid by SNP funds.
<i>Audit</i>	Independent examination of accounting and financial records for accuracy, efficiency, and consistency. This is also called the annual audit or single audit.
<i>Audit Report</i>	Final summary of audit findings provided by a financial auditor.
<i>Audit Corrective Action Plan</i>	Plan in which the CE describes the strategies or actions the CE will adopt to address each finding reported in the audit report.
<i>Audit Summary Schedule or Work Plan</i>	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.
<i>Capital Assets</i>	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).
<i>Capital Expenditures</i>	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. <sup>6</sup>
<i>Charge Period</i>	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.
<i>Cognizant Agency Related to Indirect Costs</i>	Agency that has primary responsibility for negotiating the indirect cost methodologies for non-federal entities.
<i>Cost Objective</i>	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.

<sup>6</sup> TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

<i>Direct Cost</i>	Expenses that can be identified specifically with a particular cost objective used to meet a specific program goal or goals.
<i>Equipment (Property)</i>	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. <sup>7</sup>
<i>Excessive Fund Balance (Net Cash Resources)</i>	Fund balance that exceeds three months of operating expenses. For NSLP and SBP an excessive fund balance refers to <i>net cash resources</i> . <i>[NOTE: Guidance and regulations use the term excessive fund balance for this circumstance. In this circumstance, the regulation is actually referring to excessive net cash resources, the amount of funds the SNP account has available to spend, as in the total revenue less total liabilities (expenditures).]</i>
<i>Exclusive Contract (Including Exclusive Beverage Contracts)</i>	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.
<i>Expenditures (Costs)</i>	Mount of money that is spent on an item or service.
<i>Fund Balance (Net Cash Resources)</i>	The net cash resources available in the CE's food service account. A CE must not carry a negative fund balance into the next school year or maintain an excessive fund balance on hand.
<i>Indirect Cost</i>	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.
<i>Indirect Cost Rate</i>	Established percentage of awarded funds that is dedicated to pay costs that have been identified as indirect costs.
<i>Internal Control</i>	Process 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.
<i>LEA</i>	Local education agency, an entity having administrative control and direction of a public or private nonprofit elementary or secondary school. <sup>8</sup>
<i>Necessary</i>	Item or service that is essential to the operation of the program.
<i>Negative Fund Balance (Net Cash Resources)</i>	Negative fund balance (net cash resources) at the end of the school year—A CE must not carry a negative fund balance into the next school year. A negative fund balance exists when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.

<sup>7</sup> See the *Capital Expenditures* subsection in this section for additional information on this requirement.

<sup>8</sup> This definition is taken from USDA regulation.

<i>Net Cash Resources</i>	<p>Amount of funds the SNP account has available to spend—total revenue less total liabilities (expenditures). USDA further defines <i>Net Cash Resources</i> as</p> <p><i>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.</i></p> <p>See the <i>Effective Accounting Systems</i> subsection in this section for additional information on the standards for an effective financial management system.</p>
<i>Operating Months</i>	Months during the school year that CEs operate any child nutrition program—NSLP, SBP, or the summer feeding programs
<i>Program Integrity</i>	Organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds.
<i>Program Specific Audit</i>	Review of the financial transactions—income and expenditures—and accounting procedures for a designated program.
<i>Reasonable</i>	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.
<i>Revenue</i>	Income received by an organization.
<i>Revenue to the School Nutrition Program (SNP) Account</i>	<p>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:</p> <ul style="list-style-type: none"> <li>– Federal reimbursement</li> <li>– State or local funds, such as per meal subsidies and state revenue matching funds</li> <li>– Students’ payment for reimbursable meals and a la carte sales</li> <li>– Payments for items purchased for fund raisers and vending machines</li> <li>– Income from catering and adult meals</li> </ul>
<i>Single Audit</i>	Organization –wide review of the financial transactions—income and expenditures—and accounting procedures.
<i>State Matching Funds</i>	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.
<i>Supplies</i>	Items that are expendable or consumed in day-to-day activities and replenished as needed.
<i>Unallowable</i>	Any cost <sup>9</sup> that cannot be paid by SNP funds.
<i>Unit Cost</i>	Cost for a single item.

<sup>9</sup> Includes direct and indirect costs

## Revenue (Income to the Program)

All revenues received by or accruing to the SNP account must only be used for the operation and improvement of the school nutrition program.

### Types of Revenue

Revenues include, but are not limited to, the following sources of income:

- Catering departments operated by the SNP
- Credits, discounts, and rebates awarded for the purchase of products or services as well as the value of USDA Foods<sup>10</sup>
- Earnings on SNP investments
- **Interest earned on federal and nonfederal program income**
- Federal and state reimbursements received by or accruing to the SNP account
- Non-federal funds supporting the meal or milk programs
- Other local revenues that support the meal or milk programs
- Snack bar and a la carte incomes
- Student and adult meals or milk in the National School Lunch Program (NSLP), School Breakfast Program (SBP), or Special Milk Program (SMP)
- Vending machine income if operated by the SNP<sup>11</sup>

### Catering

If the SNP operates a catering program, it must ensure that the income received for catering events covers the full cost of preparing and serving the catered items.

### Fundraising

The CE may use funds from its SNP fundraising activities for any allowable cost.<sup>12</sup>

### Funds Raised by Recycling

If SNP funds are used to purchase recycling equipment or products purchased with SNP funds are recycled, any funds raised from these efforts must be credited to the SNP financial accounts. If the cost and items for recycling is shared with other programs, any funds raised from these efforts must be credited to the SNP financial accounts in proportion to the SNP contribution.

### Investments

Earnings on investments using SNP funds totally or in part for investment purposes must accrue to the SNP account and must be used for authorized program purposes.

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<sup>10</sup> See the *Administrator's Reference Manual, Section 17, Procurement* for additional information on this topic.

<sup>11</sup> Items sold in vending machines must adhere to the requirements of the competitive food requirements. See the *Administrator's Reference Manual, Section 20, Competitive Food Nutrition Standards* for additional information on this topic.

<sup>12</sup> See *Fundraising, Actions to Raise Funds for the Program* under the *General Expenditures—Allowable and Unallowable Costs* subsection in this section for additional information on this topic.

### Revenue from Meal Service That Includes USDA Foods

All income that comes from any meal service in which USDA Foods were used must be deposited into the nonprofit school food service account and must be used for the operation or improvement of such service. These funds cannot be deposited into a separate account (i.e., catering or vending). Moreover, the CE cannot reimburse the nonprofit school food service account for the value of the USDA Foods in lieu of depositing all income that comes from these meals into the nonprofit school food service account.

### End of Year Fund Balance (Net Cash Resources)

Any positive balance remaining in the SNP account at the end of the school year must be carried over to the next school year as the beginning balance in the SNP account. Any negative balance in the SNP account at the end of the year must be cleared by funds from non-SNP sources. A CE cannot carry a negative fund balance (net cash resources) into the next school year. A negative fund balance exists when all net cash resources have been depleted, and the resulting negative balance constitutes a liability to the organization.

### Excessive Fund Balance (Net Cash Resources)

To maintain the nonprofit status required for the SNP, the fund balance (net cash resources<sup>13</sup>) of the SNP account must not exceed three month's average expenditures at any time. The *Excessive Balance (Net Cash Resources) Calculation Chart* provides an explanation and examples of how to determine if the CE has an excessive fund balance.

#### Excessive Balance (Net Cash Resources) Calculation Chart

Determine the CE's average monthly operating expenses by dividing the prior year's expenses by the number of months in operation in the prior year.

Prior Year's Expenses		Number Months in Operation Prior Year <sup>14</sup>		Average Monthly Operating Expenses
\$900,000	÷	10	=	\$90,000

Determine if the CE has an excessive fund balance (net cash resources) by comparing the total net cash on hand (Amount A) to three month's average expenses (Amount B).

Amount A		Average Monthly Operating Expenses		Amount B
Current Operating Balance—Total Net Cash Resources on Hand				Three Month's Average Expenses
\$200,000		\$90,000	x 3 =	\$270,000

If Amount A is larger than Amount B, the CE has an excessive operating balance and needs to submit a plan for eliminating its excessive balance to TDA.

<sup>13</sup> While guidance and regulations use the term *excessive fund balance* in this circumstance, the regulation is referring to *excessive net cash resources*, the amount of funds the SNP account has available to spend, as the total revenue less total liabilities (expenditures). See the *Definitions* subsection in this section for a more detailed definition.

<sup>14</sup> *Number Months in Operation Prior Year* includes any month when the CE was operating any meal program. This includes summer feeding programs.

### Determining If There Is an Excessive Fund Balance (Net Cash Resources)

Use the following method to calculate the CE's average monthly operating expenses.

1. <u>Divide</u> the prior year's total food service expenses by the number of months in operation for the prior year.	Prior Year's Expenses	Number of Months in Operation Prior Year	Average Monthly Operating Expenses
		÷	=
2. <u>Record</u> the amount of total net cash on hand for the food service program in column Amount A, <i>Current Operating Balance—Total Net Cash Resource on Hand</i> .	Amount A Current Operating Balance—Total Net Cash Resources on Hand	Average Monthly Operating Expenses	Amount B Three Month's Average Expenses
3. <u>Record</u> the CE's average monthly expenses for the food service account in the <i>Average Monthly Operating Expenses</i> .		x 3	
4. <u>Multiply</u> the <i>Average Monthly Operating Expenses</i> by 3 to calculate <i>Three Month's Average Expenses</i> and record this amount under Amount B, <i>Three Month's Average Expenses</i> .		=	
<p>If <u>Amount A is larger than Amount B</u>, the CE has an excessive operating balance and needs to submit a plan for eliminating its excessive balance to TDA. The CE must use this form to submit its plan.</p> <p>If <u>Amount B is larger than Amount A</u>, the CE does <u>not</u> have an excessive fund balance and does <u>not</u> need to submit a plan or use this form.</p>			

### Resolving an Excessive Fund (Net Cash Resources) Balance

If an excessive fund balance occurs, the CE must immediately take steps to reduce its net cash resources or have an acceptable plan for using surplus net cash resources. Since program funds must be used only for program purposes, excess net cash resources must be reduced by improving the quality of food served<sup>15</sup> or purchasing needed supplies, services, or equipment.

<sup>15</sup> TDA's *Boost Meal Appeal* website provides numerous resources that CE may use to improve the quality of food served. These resources are available at [www.squaremeals.org](http://www.squaremeals.org).

The plan must be submitted to the Texas Department of Agriculture (TDA) on the *Plan for Reducing an Excessive Operating Fund Balance*<sup>16</sup> form which is available on TDA's SquareMeals website ([www.squaremeals.org](http://www.squaremeals.org)). The plan must provide the following:

- Explanation of how the CE will reduce the fund balance (net cash resources) to an acceptable level within one year by improving the quality of food served or by purchasing needed supplies, service, or equipment<sup>17</sup>
- Explanation of what the CE will do to ensure that an excessive fund balance (net cash resources) will not occur in the future

### **Special Guidance, Excessive Fund Balance (Net Cash Resources)**

Allowing net cash resources to build up in the food service account for an extended period to save for a future project is unallowable. If the proposed expenditure project is a construction project, construction projects are typically not allowable.

### **Continued Failure to Resolve an Excessive Fund (Net Cash Resources) Balance**

If a CE continues to have an unresolved excessive balance over multiple years, USDA regulations state that TDA must make adjustments in the rate of reimbursement in order to assist the CE in maintaining a fund balance that is not excessive.

## **Reimbursement Rates**

Reimbursement rates are updated annually by USDA and can be found on the TDA website at [www.squaremeals.org](http://www.squaremeals.org). For additional information on this topic, see the *Administrator's Reference Manual, Section 7, Counting and Claiming*.

## **State Matching Funds**

Public school districts and charter schools participating in NSLP receive an annual payment of state matching funds based on the number of lunches reported on reimbursement claims filed during the previous year from September 1 through August 31 as required by federal law. These funds are deposited each spring into the each public school district and charter school account. The funds must be used for SNP operation and improvement.

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<sup>16</sup> Additional directions on how to submit the form are located on the form itself.

<sup>17</sup> An excessive operating food service fund balance (net cash resources) cannot be reduced by altering children's meal pricing structures when altered pricing conflicts with the paid lunch equity requirements. See the *Administrator's Reference Manual, Section 15, Meal Pricing* for additional information on this topic.

## Expenditures (Costs)

Revenues must be used for expenses that are necessary for SNP operation and improvement. This includes, but is not limited to, food, equipment, supplies, and program personnel. SNP funds must not be used for expenditures that are not directly related to the SNP operation and improvement even though the SNP account may be part of the CE's general fund. All expenditures must be reasonable, allowable, and allocable.

All financial transactions related to expenditures are subject to the procurement regulations described in the *Administrator's Reference Manual, Section 17, Procurement*. CEs must use that guidance in addition to the guidance in this section to ensure that they are in compliance with all regulations related to financial management.

All costs are either categorized as direct or indirect. A direct cost cannot be an indirect cost. It must be one or the other—not both. CEs must use the following guidance in determining if an expense is allowable.

### Direct Cost

Direct cost is defined as expenses that can be identified specifically with a particular cost objective used to meet a specific program goal(s).

Direct costs include, but are not limited to, the following:

- Payroll
- Contracted services
- Food and milk costs
- Equipment and supplies
- Repairs to equipment

### Indirect Cost

Indirect cost is defined as expenses that are incurred for the benefit of multiple programs or functions and are necessary for the general operation of the SNP program, but these expenses cannot be directly attributable to the SNP.

*[NOTE: Expenses that can be directly attributable to the program are classified as direct costs. Costs that can be directly attributable to the program include, but are not limited to, payroll services, building utilities, contracted services specific to the SNP, and food costs.]*

## Documentation Demonstrating Direct and Indirect Costs

The following list of direct and indirect cost items helps to illustrate how documentation assists in the decision about whether a cost is direct or indirect. This list is not exhaustive.

Cost Item		Description	Documentation <sup>18</sup>
<b>Food and Food Supplies</b>	<i>Direct Cost</i>	Items used to prepare and serve meals	Itemized vendor invoices
<b>Labor</b>	<i>Direct Cost</i>	Wages and salaries of full or part time employees involved in operating the food service program	Time card <sup>19</sup> indicating actual time by program
<b>Custodial Services</b>	<i>Direct Cost</i>	Services to clean kitchen/serving areas only	Time card indicating actual time by program
<b>Custodial Services</b>	<i>Indirect Cost</i>	Services to clean entire school, including kitchen/serving area	Time card not indicating time by program
<b>Maintenance Charges</b>	<i>Direct Cost</i>	Equipment/materials in kitchen/serving areas repaired or replaced by in-house personnel or external vendor	Itemized vendor invoice indicating actual time or time card indicating actual time by program
<b>Maintenance Charges</b>	<i>Indirect Cost</i>	Kitchen/serving area equipment/materials repaired or replaced by in-house personnel or a vendor	Vendor invoice not specific to program area or time card not indicating time by program
<b>Trash Collection</b>	<i>Direct Cost</i>	Trash pickup for school and kitchen/serving area	Itemized vendor invoice indicating actual time or time card indicating actual time by program
<b>Trash Collection</b>	<i>Indirect Cost</i>	Trash pickup for school and kitchen/serving area	Vendor invoice not specific to program area or time card not indicating time by program
<b>Utilities</b>	<i>Direct Cost</i>	Meter for kitchen/serving area	Vendor invoice specific to program area
<b>Utilities</b>	<i>Indirect Cost</i>	Meter for the entire school	Vendor invoice not specific to program area
<b>Accounting Services</b>	<i>Direct Cost</i>	School office personnel providing change, verify daily receipts, perform banking duties, etc.	Time card indicating actual time by program

<sup>18</sup> See *Employee Timekeeping* subsection in this section for additional information on the requirements for tracking time to be charged to the nonprofit food service account as direct or indirect costs.

<sup>19</sup> Employees may account for time in a variety of forms. Accounting may be traditional paper time cards, activity reports, time sheets submitted through electronic systems, or any other appropriate method.

Cost Item		Description	Documentation <sup>18</sup>
<i>Accounting Services</i>	<i>Indirect Cost</i>	School office personnel providing change, verify receipts, perform banking duties, etc.	Time card not indicating time by program
<i>Payroll Services</i>	<i>Indirect Cost</i>	Services provided CE-wide	Time card not indicating time by program
<i>Information Technology Support</i>	<i>Direct Cost</i>	Services provided specific to operation of the food service program	Time card indicating actual time by program
<i>Information Technology Support</i>	<i>Indirect Cost</i>	Services provided CE-wide	Time card not indicating time by program
<i>Pest Control</i>	<i>Direct Cost</i>	Services specific to kitchen/serving /food storage areas	Itemized vendor invoice or time card indicating cost by program area
<i>Pest Control</i>	<i>Indirect Cost</i>	Services provided to various areas of the school	Vendor invoice not specific to program area or time card not indicating time by program area

### Questions Related to Determining Direct or Indirect Costs

In determining whether a cost should be a direct or indirect cost, the CE should use the following questions to help decide whether the cost is direct or indirect:

Questions to Consider	Common Practices
Does the cost benefit multiple programs or other cost objectives, or is it solely for the school food service?	<i>Costs that are common to more than one program are typically appropriate to allocate as indirect costs. Costs which are unique to a specific program are typically appropriate to allocate as direct costs.</i>
Does the cost have a direct relationship to the operation of the SNP?	<i>Costs which are unique to SNPs are commonly direct costs.</i>
How are similar costs treated in other cost objectives?	<i>CEs must apply direct and indirect costs consistently across all programs.</i>
How has this cost been treated in the past—an indirect or direct cost?	<i>CEs must treat costs as direct or indirect consistently over time.</i>

## Types of Indirect Cost Rates

There are two types of indirect cost rates: restricted and unrestricted.

<i>Restricted</i>	<i>Unrestricted</i>
Use if grant funds specify supplement, not supplant. This method is intended to minimize the amount of program funds used for indirect costs.	Use if supplement, not supplant, does not apply. This method is intended to maximize the allowed amount of program funds used for indirect costs.

SNPs may use either the restricted or unrestricted indirect cost rate. However, if a CE charges indirect costs incorrectly, the resulting costs are unallowable.

## Method for Calculating Indirect Costs

The *Indirect Calculation Chart* below demonstrates how direct costs are calculated.

Indirect Calculation Chart			
Unrestricted Indirect Cost Rate Calculation			
Indirect Cost Pool (Sum of Allowable Indirect Costs)	÷	Direct Cost Base (Allowable + Unallowable Direct Costs)	= Unrestricted Indirect Cost Rate
Restricted Indirect Cost Rate Calculation			
Organizational Costs (General Management <sup>a</sup> Costs + Fixed <sup>b</sup> Costs)	÷	Direct Cost Base (Allowable + Unallowable <sup>20</sup> Costs)	= Restricted Indirect Cost Rate
<sup>a</sup> Costs incurred for the direction and control of the organization as a whole, i.e., accounting, payroll, human resources, audit, procurement <sup>b</sup> Contributions to fringe benefits associated with wages and salaries that are charged as indirect costs			
Total Program Costs			
Direct Costs	+	Indirect Costs	= Total Program Costs

## Eliminating Costs That Distort the Indirect Cost Calculation

In calculating the indirect cost amount, the CE must exclude any cost that distorts the calculation. Types of costs that may distort the indirect cost rate calculation include, but are not limited to, the following:

- Cost for a contract or purchase beyond \$25,000
- Equipment purchases and other capital expenditures
- Food costs
- Renovations or alterations to facilities
- Fines, penalties, bad debt

<sup>20</sup> Unallowable costs are included in this calculation step. However, while unallowable costs are used in this calculation step, the CE cannot charge unallowable costs to the nonprofit school food service account.

Costs items which may distort the indirect cost are removed from the direct cost base when calculating the total amount of indirect cost allowed to be charged to the nonprofit school food service account. This creates the modified direct cost base which is used to calculate the total allowed indirect cost that can be applied to the actual indirect cost total as demonstrated in the following formula.

Applying an Indirect Cost Rate for SNP			
SNP Indirect Cost Rate	x	SNP Modified Direct Cost Base (SNP Allowable Direct Costs Minus Distorted Costs)	= Total Allowed SNP Indirect Cost That Can Be Applied to SNP Actual Indirect Cost Total

The *Indirect Cost Diagram* illustrates the relationship of the SNP allowable indirect costs to the CE's allowable indirect costs.

### Consistent Application

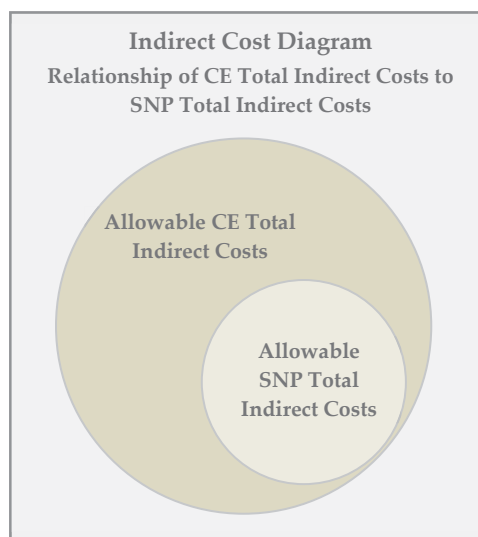
The program operator must classify all similar costs as direct or indirect in a consistent manner. That is, the same cost item incurred under the same circumstances must be treated consistently as a direct cost or indirect cost.

The CE must also apply the indirect cost rate(s) in a consistent manner.

*For Example:* A CE has an unrestricted indirect cost rate of 11.66%. The rate applies to 7 programs, including SNP. The nonprofit school food service account is charged indirect costs for 30% of utilities (phone, electricity, gas, and internet), 30% of administrative costs, and 30% of office supplies. The other programs apply the indirect cost rate of 11.66%. In this case, the SNP portion is not consistent with the other programs, i.e., the SNP is paying 30%; all other programs are paying much less.

*The nonprofit school food service account cannot be charged a higher indirect cost rate than other programs unless another program is required to have a different rate.*

*Moreover, office supplies are typically categorized as direct costs. If office supplies are charged as an indirect cost, the CE needs documentation that demonstrates why office supplies cannot be charged as a direct cost.*



### *When There Are Programs That Require a Restricted Indirect Cost Rate*

An SNP may use the restricted or unrestricted indirect cost rate, but there are programs that must<sup>21</sup> apply the restricted indirect cost rate. In cases where the CE is able to demonstrate that a program is required to apply a restricted indirect cost rate to specific programs and where the CE chooses to use the unrestricted indirect cost rate for the SNP, charging a restricted indirect cost rate to some programs and an unrestricted to others is allowable.

When the use of different indirect cost rates is permissible, the CE must ensure that the indirect cost rates are still treated consistently. If the nonprofit school food service account is charged the highest allowable indirect cost rate, then, all programs must be charged the highest allowable indirect cost rate.

If an indirect cost rate applied to any program is less than the allowed indirect cost rate, the indirect cost rate charged to the nonprofit school food service account must be decreased by an equitable proportion to be treated consistently.

*For Example: The CE is required to use a 3.7% restricted indirect cost rate for one of its federally funded programs and uses a 13.75% unrestricted indirect cost rate for the SNP. The CE decides to reduce the restricted indirect cost rate by one percent, so the CE must reduce the SNP unrestricted indirect cost rate by one percent in a consistent and proportional method.*

*In this case, the following method of decreasing the indirect cost rate is not proportional and does not result in consistent treatment:*

*Restricted,  $(3.7\% - 1\%) = 2.7\%$*

*Unrestricted,  $(13.75\% - 1\%) = 12.75\%$*

*The following method of decreasing the indirect cost rate is proportional and does result in consistent treatment:*

*Restricted,  $[3.7 - (3.7\% \times 1\%)] = 3.33\%$*

*Unrestricted,  $[13.75 - (13.75\% \times 1\%)] = 12.375\%$*

### *Prior Year Indirect Cost Rate*

It is also unallowable to bill the nonprofit school food service account for indirect costs that were paid from the general fund in prior years unless an agreement, established at the time the indirect costs were not charged, exists to show that the CE has

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<sup>21</sup> In general, funds which come from the US Department of Education require supplement, not supplant, and, therefore, require the use of the restricted rate.

been *loaning* the nonprofit school food service account funds to cover the indirect costs in one or more prior years.

### **Actual Total Indirect Cost, Greater Than the Actual Total Indirect Cost**

When the total allowable indirect cost amount is greater than the actual total indirect cost, the portion of the cost which exceeds the actual total indirect cost is unallowable to the nonprofit school food service account.<sup>22</sup>

*For Example: The CE sums the allowable indirect costs for all of the CE's programs as \$374,000, but the actual total of all indirect cost items for all programs is \$264,840. The CE cannot charge the full allowed amount calculated (\$374,000) for indirect costs because the amount is 141% of the actual cost—i.e., \$109,160 is unallowable because the amount exceeds the actual total cost for all indirect cost items for all programs.*

*Therefore, when applying the indirect cost rate, the CE must ensure that the nonprofit school food service account is charged a proportional amount of actual allowable indirect costs that is consistent with the amount all programs are charged for indirect costs.*

### **Actual Total Indirect Cost, Less Than the Actual Total Indirect Costs**

When the CE applies both restricted and unrestricted rates as appropriate to different programs, the result may be that CE's total actual indirect cost amount may not be covered. If this occurs, the nonprofit school food service account funds cannot be used to cover any amount greater than the allowed indirect costs for the SNP based on its indirect cost rate.

*For Example: The CE has an actual total indirect cost of \$134,840 for all of the CE's programs. Across the CE's programs, 3 are required to use a restricted indirect cost rate and 4 use an unrestricted indirect cost rate.*

*When the CE applies the indirect cost rate to each program's modified direct cost base, the total allowed indirect cost amount is \$89,965.24. This amount is \$44,874.76 less than the actual cost for all programs.*

*In this case, any portion of or the full \$44,874.76<sup>23</sup> exceeding the actual cost is an unallowable cost to the nonprofit school food service account. These remaining costs must be paid by another funding source. The nonprofit school food service account may only cover the amount calculated as its indirect costs for the SNP.*

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<sup>22</sup> This discrepancy is unlikely to occur when CEs calculate the indirect rate using the Texas Education Agency's indirect rate process, but it may happen if a CE uses the de minimus indirect rate as described under the *Indirect Cost Rate, Without a Cognizant Agency* subheader in this section.

<sup>23</sup> In general, when a restricted indirect cost rate is applied to actual indirect costs, the actual total cost of the indirect costs may not be completely covered because restricted rates are designed to ensure that the CE supplements existing funds and does not supplant or replace existing funds. The restricted indirect cost rate is intended to minimize the use of program funds and, when used, may result in amount applied which is less than the total actual indirect costs.

### **Indirect Cost Rate, Private Schools and Residential Child Care Institutions (RCCIs)**

Private schools and RCCIs should identify their cognizant agency and work with this agency to establish an approved indirect cost rate.

### **Indirect Cost Rate, Texas School Districts and Texas Charter Schools**

For Texas school districts and charter schools the Texas Education Agency (TEA) is their cognizant agency. The indirect cost rate for Texas school districts and charter schools is established through a cooperative agreement between the United States Department of Education and TEA. TEA provides resources and guidance on indirect calculation procedures and rates.<sup>24</sup> The rates established through this cooperative agreement are also applicable to Child Nutrition Programs (CNPs). The cost items that will be included as indirect costs must be indicated in the CE's indirect plan and in the CE's financial management procedures.

TEA provides detailed guidance on indirect cost rates on the TEA website at [https://tea.texas.gov/Finance\\_and\\_Grants/Grants/Federal\\_Fiscal\\_Compliance\\_and\\_Reporting/Indirect\\_Cost\\_Rates/Indirect\\_Cost\\_Rates/](https://tea.texas.gov/Finance_and_Grants/Grants/Federal_Fiscal_Compliance_and_Reporting/Indirect_Cost_Rates/Indirect_Cost_Rates/).

### **Indirect Cost Rate, Without a Cognizant Agency**

If a CE does not have a cognizant agency, the CE may calculate its indirect rate each year using the guidance provided by USDA in *Indirect Costs, Guidance for State Agencies & School Food Authorities* (2016) or may use the de minimis indirect rate of 10%.

### **Special Guidance, Indirect Costs**

The following guidance applies to the **calculation for or designation** as indirect costs.

#### *Indirect Costs, Fundraising*

Both allowable and unallowable fundraising and investment activities must be allocated as an appropriate share of indirect costs as described in the terms and conditions of the award.

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<sup>24</sup> Information on indirect cost rate is available at [www.tea.state.tx.us/index2.aspx?id=3842&menu\\_id=645](http://www.tea.state.tx.us/index2.aspx?id=3842&menu_id=645).

## Factors Affecting the Allowability of Costs

To determine if a cost is allowable the CE must consider the following factors:

### Reasonable

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the purchase decision was made. In determining the reasonableness of a purchase cost, consideration must be given to the following issues:

- *Necessary*. Is the cost generally recognized as ordinary and necessary for the operation of the SNP or the proper and efficient performance of the program?
- *Sound Business Practices and Regulations*. Does the purchase meet the standards or regulations imposed by sound business practices; federal, state, local, tribal, and other laws and regulations; and terms and conditions of CE's agreement with TDA?
- *Fair Price*. Is the cost in line with market prices for comparable goods or services for the geographic area?
- *Prudent*. Have the individuals involved with the purchase acted sensibly<sup>25</sup> in the situation or circumstance considering their responsibilities to the CE?
- *Established Practices*. Does this purchase significantly deviate from the CE's established practices and policies regarding such purchases?

### Allocable

A cost is allocable to a particular program or other cost objective if the goods or services involved are chargeable or assignable to that program or cost objective based on the relative benefits received. In determining if a cost is allocable, consideration must be given to the following issues:

- *Purpose*. Is the purchase cost aligned with the purposes described for the federal program for which the funds were awarded?
- *Shared Benefits*. If the purchase benefits both the program and other non-program activities, can the cost be distributed proportionally to all programs that benefit from the purchase?
- *Necessary and Allowable*. Is the cost necessary and allowable?
- *Indirect Costs*. Will any indirect cost associated with this purchase be treated consistently across programs, including the determination of unallowable and allowable cost?

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<sup>25</sup> In this case, sensibly means managing carefully, wise, judicious, without extravagance.

## Consistency

The cost must be consistent with the policies and procedures that apply uniformly to both the federally-financed and other activities of the CE.

- *Ordinary and Common.* Is the item or service generally considered an ordinary and a common expense for an SNP program?
- *Consistent Treatment.* Is the cost for the item or service consistent with the way the CE charges the costs for other programs for direct and indirect costs?

## Is the Cost Allowable?

Using the criteria described in the *Necessary and Reasonable* and *Allocable* subsections in this section, the CE determines if the cost of the item is allowable. The cost of an item or service is allowable if it meets the criteria described in the following questions:<sup>26</sup>

### *Questions to Help Determine if a Cost Is Necessary, Reasonable, and Allocable*

- *Could the CE justify the purchase to USDA, TDA, the media, or auditors? Would a taxpayer deem the cost to be appropriate for the objectives of the SNP?*
- *Would a prudent person consider the cost to be reasonable? Is the cost charged at a fair rate or do alternatives exist that may be more cost effective?*
- *Does the item or service support the operation of the program? Does the item or service help the CE to achieve program objectives?*

### *Questions to Help Determine if a Cost Is Consistent with Federal, State, and Local Requirements*

- *Is the payment method for the item or service consistent with the way other programs pay for direct and indirect costs?*
- *Has the CE made sure that the cost of the item or service is not associated with any cost or matching contributions for any other grant?*

### *Questions to Help Determine if a Cost Is in Line with Accounting Principles*

- *Is the use of the item or service recognized as ordinary and appropriate for SNP operation?*
- *Is use of the item or service consistent with federal law, regulation, and terms of the grant or contract?*
- *Is payment for item or service consistent with the Generally Accepted Accounting Principles (GAAP)?*
- *Will payment for the item or service be made from SNP funds or from general funds?*
- *Is the invoice and payment for the item or service adequately documented?*

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<sup>26</sup> Questions based on guidance on allowability from 2 CFR, Subtitle A, Chapter II, Part 200—Uniform Administrative Requirements, Costs Principles, and Audit requirements for Federal Awards.

## Unit Cost Maximum

An expenditure of any single item that exceeds \$5,000 must have preapproval from TDA for the cost to be allowable. See the *Capital Expenditure* subsection in this section for additional information on this topic.

## General Expenditures—Allowable and Unallowable Costs

All expenditures must be reasonable, allowable, and allocable. The following examples describe common allowable and unallowable uses of SNP funds.<sup>27</sup>

### Advertising, Disposal of Surplus Materials

#### *Allowable:*

- Materials and expenses to obtain services to properly dispose of surplus materials

### Advertising, Outreach

#### *Allowable:*

- Materials and expenses for communication with parents and the community about program activities and services

#### *Unallowable:*

- Materials and expenses for public relations materials or activities designed solely to promote CE and not promote the school nutrition program(s) the CE operates

### Advertising, Procurement

#### *Allowable:*

- Materials and expenses to publicize procurement solicitations

### Advertising, Recruitment

#### *Allowable*

- Materials and expenses to recruit personnel

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<sup>27</sup> This list is not exhaustive. *Information Box 1, Guidance on Program Accounting and Financial Systems* provides a list of resources that provides additional examples of allowable and unallowable costs items.

## Contributions

### *Unallowable*

- Contributions of cash, property, and services by the CE to another entity

## Equipment, Disposal of Equipment

### *Allowable*

- Costs associated with the disposal or transfer of equipment if the CE is instructed by TDA to dispose of the equipment<sup>28</sup>

## Supplies, Expendable Items and Other Supplies

### *Allowable*

- Materials or supplies used specifically in the SNP operation, including items that must be replaced from time to time: pots and pans, serving trays, dishes, glassware, silverware, linen, mops, brooms, and cleaning supplies

*If the CE purchases items as part of central contract, supplies must be charged to the program at net cost.*

- Uniforms or shoes purchased specifically for SNP staff which staff are required to wear as part of regular program operation.

*If the CE purchases uniforms or shoes, the CE must establish a standard that use is limited to tasks related to program operation and must ensure that cost is reasonable and necessary for the staff member's assigned tasks.*

*For Example: A staff member who works in the kitchen or in transporting food to another campus may need to have steel-toed shoes to prevent foot injury. A staff member located in the central office would not be assigned tasks that warrant the purchase of steel-toed shoes.*

*or*

*The CE may require all staff who enter food preparation or food service areas wear a specific type of hair covering. Since this is a health and safety issue, the CE may provide hair coverings to staff for this purpose.*

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<sup>28</sup> CEs may trade in old equipment as part of the cost for new equipment.

## **Equipment, Nonexpendable Items**

### *Allowable*

- Items or equipment used directly in preparing, storing, or serving meals, including items such as ranges, refrigerators, freezers, steam tables, mixers, storage cabinets, garbage containers, tables, chairs, hot water heaters, and portable fans

*This category may include charges for installing equipment and connecting to utilities in the building in which the SNP operates as well as maintenance service, upkeep, and repair of equipment.*

## **Equipment, Office Equipment**

### *Allowable*

- Items used to support program goals and objectives including such items as cash registers, adding machines, software, communication equipment, and other equipment used exclusively for the SNP operation as well as maintenance, upkeep, and repair of allowable office equipment

*This category may include charges for installing equipment and connecting utilities in the building in which the SNP operates as well as maintenance service, upkeep, and repair of equipment.*

## **Equipment, Office Equipment, Cell Phone**

### *Allowable*

- Cell phones and cell phone expenses if the cell phone contract is in the CE's name and not in the name of the individual employee using the cell phone

### *Unallowable*

- Cell phones and cell phone expenses considered to be a stipend or allowance
- Cell phones and cell phone expenses purchased and registered in the name of the employee

## **Equipment, Computers**

### *Allowable*

- Computers/computing devices that are essential to program operation<sup>29</sup>

## **Facilities, Improvement, Rearrangement, and Reconversion**

### *Allowable*

- Supplies, equipment, and labor costs associated with facility improvement, rearrangement, and reconversion with TDA approval before incurring the cost

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<sup>29</sup> When CEs purchase computers to use for SNP programs, staff must ensure that private information is safeguarded. This includes protecting private information collected by the SNP from being seen by anyone not authorized to access the information.

*Unallowable*

- Supplies, equipment, and labor costs associated with facility improvement, rearrangement, and reconversion without TDA approval before incurring the cost

**Facilities, Insurance**

*Allowable*

- Premiums for covering SNP property in connection with general operations and sound business practices
- Premiums for insurance that the CE is required to carry by federal, state, or local regulation or law

*Unallowable*

- Loss resulting from failure to maintain insurance as prescribed by regulation

**Facilities, Land Purchase, Acquisition, Construction, and Renovation**

*Allowable*

- Payment to purchase land, acquire or construct buildings, or make alterations to existing buildings that materially increase the value of capital assets when the CE has been approved to do so prior to purchase

*A request for this type of purchase must be sent to TDA. TDA will review the request and submit it to USDA for approval.<sup>30</sup>*

*Unallowable*

- Payment to purchase land, acquire or construct buildings, or make alterations to existing buildings that materially increase the value of capital assets unless the CE has been approved to do so prior to purchase

*A request for this type of purchase must be sent to TDA. TDA will review the request and submit it to USDA for approval.<sup>31</sup>*

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<sup>30</sup> Requests for these purchases should be submitted using the contact information provided on the *Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition* page in this section.

<sup>31</sup> Requests for these purchases should be submitted using the contact information provided on the *Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition* page in this section.

## Facilities, Mobile or Temporary Sites

### *Allowable*

- Costs associated with transporting food items from one location to another, including vehicle costs and equipment
- Equipment to hold food at the correct food safe temperature<sup>32</sup>
- Serving equipment or supplies specific to the operation of a mobile or temporary site
- Retrofitting a vehicle or equipment for food transportation or meal service functions

*[NOTE: Care must be taken to ensure that any cost associated with retrofitting a vehicle or equipment does not constitute the creation of infrastructure. SNP funds cannot be used to create infrastructure. Because retrofitting can be unique to a CE's situation, CEs should contact their ESC or TDA if they are unsure if their planned costs are allowable. Any single cost item that exceeds the capital expense threshold must be submitted to TDA for approval. See the Capital Expenditures subsection of this section for additional information on this topic.]*

- Portion of any shared equipment or supplies to be shared with other groups in proportion with the use by the Child Nutrition Program (CNP)

### *Unallowable (Unless Approved by USDA)*

- Infrastructure needed for operation of the program, including a food truck used to prepare food

*[NOTE: CEs may submit a request to TDA to use funds from the nonprofit food service account for infrastructure. TDA will review the request and forward the request to USDA for approval.]*

## Facilities, Rental of Facilities or Equipment

### *Allowable*

- Rental or lease fees for non-SNP owned facilities such as cafeterias, kitchens, or storage facilities required for specific program needs

### *Unallowable*

- Rental or usage fees for CE-owned equipment or facilities such as cafeterias, kitchens, or storage facilities

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<sup>32</sup> If any cost of a single item exceeds \$5,000, the CE must submit a request for a capital expense in the Texas Unified Nutrition Programs System (TX-UNPS).

## **Facilities, Security**

### *Allowable*

- Expenses for the protection and security of facilities, personal, and work products including wages and uniforms of personnel engaged in security activities, equipment, barriers, and contracted services

## **Facilities, Services**

### *Allowable*

- Services which are necessary for the operation of the program, including services such as pest control, trash removal, security, and janitorial

## **Facilities, Utilities**

### *Allowable*

- Actual costs accounted for separately or prorated for the SNP and applied consistently for all programs. CEs must use a reasonable method to determine the cost of utilities

*The best method is using separate meters. The next best is a utility company survey. Applying the square foot percentage of total building space in use by the SNP to determine the SNP's proportion of the utility cost is an acceptable method. In all cases, the CE must retain documentation that demonstrates that the method for determining utility costs is reasonable.*

## **Financial, Audits**

### *Allowable*

- Cost for audits conducted in accordance with program requirements or a proportional share of the costs of audits (if the audit covers non-SNP programs) conducted in accordance with program requirements

### *Unallowable*

- Cost for any audit not conducted in accordance with requirements

## **Financial, Cost Sharing**

### *Unallowable*

- Charging any goods or services that are part of a cost sharing or matching requirement to the food service account, including prorating of expenses in an inconsistent method with other programs without adequate documentation

## Financial, Depreciation

### *Allowable*

- Depreciation or use allowances based on a straight line calculation method (the pattern of consumption of the asset) that have a useful life of more than one year for assets purchased after December 26, 2014 or another method which allows the CE to demonstrate with clear evidence that the expected pattern of consumption would be greater in the earlier portions of the asset's useful life<sup>33</sup>

### *Unallowable*

- Depreciation calculated by any method other than a straight line calculation for items purchased after December 26, 2014<sup>34</sup> unless the CE is able to demonstrate with clear evidence that the expected pattern of consumption would be greater in the earlier portions of the asset's useful life
- Depreciation recorded on the cost of land; any portion of the cost of a building donated by the federal government no matter where the title was originally vested
- Depreciation for any asset purchased with restricted program funds
- Depreciation for any asset that has been paid for in full though payments were made over more than one fiscal year
- Depreciation for any asset that has outlived its depreciable life
- Depreciation for any asset that is paid for in full in the current fiscal year

## Financial, Improperly Procured Products or Services

### *Unallowable*

- Costs incurred as result of improperly procured products and/or services whether the cost be incurred as a result of micro-purchase, small purchase, invitation for bids, or request for proposals methods of purchasing

### Information Box 2

#### Resources for Depreciation

Texas Comptroller of Public Accounts Website search for depreciation schedule from main page,

[www.comptroller.texas.gov/](http://www.comptroller.texas.gov/)

Internal Revenue Service, search for Publication 946, *How to Depreciate Property* from the main page, [www.irs.gov](http://www.irs.gov)

<sup>33</sup> Not all CEs depreciate equipment. Use of the depreciation option is often determined by requirements from the funding source. CEs should consult with business or financial managers to determine the appropriate depreciation use allowances for their programs. The straight-line depreciation method identifies the number of years an asset, tangible or intangible, is expected to function and divides the total cost by the number of years.

<sup>34</sup> The straight-line depreciation method identifies the number of years an asset, tangible or intangible, is expected to function and dividing the total cost by the number of years. 2 CFR 200 states that depreciation must reflect the pattern of consumption of the asset and not the loss of economic value that might occur in the earlier years of use with such items as automobiles or computers.

## **Financial, Interest**

### *Allowable*

- Interest at the prevailing loan rate

### *Unallowable*

- Interest costs for the use of the program's own funds
- Expenses used for lobbying and membership in an organization that devotes substantial activities to lobbying and influencing legislation

## **Financial, Scholarship**

### *Unallowable*

- Use of funds from any SNP payments, rebates, credits, or other income for student scholarships

## **Financial, School Improvement**

### *Unallowable*

- Use of funds from any SNP payments, rebates, credits, or other income for school improvement expense

## **Food Operation, Food Service**

### *Allowable*

- Food purchases and costs directly related to the storage, handling, processing, and transportation of food

## **Fundraising, Actions to Raise Funds for the Program**

### *Allowable*

- Costs related to the physical custody and control of monies and securities that result from fundraising
- Costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency.

### *Unallowable*

- Costs of organized fundraising , including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions
- Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part

## **Insufficient Check Charge**

### *Allowable*

- Bank charges for insufficient checks that the CE receives from individuals or entities

### *Unallowable*

- Bank charges when the CE issues an insufficient check

## **Legal Expenses, Attorney's Fees**

### *Allowable*

- Appropriate fees that are consistent with normal program operations  
*CEs must consult with TDA when there is a question as to whether the fee supports normal program operations.*

### *Unallowable*

- Costs incurred in the defense of any civil, criminal, or administrative fraud proceeding or similar charge

## **Legal Expenses, Fines and Penalties**

### *Unallowable*

- Fines, penalties, damages, or other settlements resulting from violations or alleged violations of, or failure of the entity to comply with, federal, state, local, or other government agencies

## **Lobbying, Political Activities and Events**

### *Unallowable*

- Expenses used to influence the outcomes of any federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity
- Expenses used to establish, administer, contribute to, or pay the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States
- Expenses used in an attempt to influence the introduction of federal or state legislation; the enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity); or any government official or employee in connections with a decision to sign or veto enrolled legislation
- Expenses used to attend a legislative session or committee hearing with the intent of gathering information regarding legislation and analyzing the effect of legislation when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying

## **Meal Accommodation**

### *Allowable*

- Expenses related to a required meal accommodation as described in a medical statement or written into a student's Individualized Education Plan (IEP)

## **Outreach and Public Relations, Committees**

### *Allowable*

- Expenses for organizing or activities related to committees or councils that increase outreach and promote program involvement

## **Outreach and Public Relations, Incentives/Prizes to Participating Families**

### *Allowable*

- Reasonable incentives to encourage households to return completed free and reduced-price meal applications

## **Outreach and Public Relations, Promotional Materials**

### *Allowable*

- Exhibits or other information sharing activities related specifically to the SNP as well as printed materials to communicate information and messages central to program operations and program mission
- Activities to maintain and promote understanding and favorable relations with the community or public at large or any segment of the public
- Translation of materials for food service purposes<sup>35</sup>

### *Unallowable*

- Expenses for meetings, conventions, and convocations for purposes other than those described above as allowable
- Cost of displays, demonstrations, and exhibits, meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events other than those described above as allowable
- Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, or providing briefings other than those described above as allowable
- Cost of promotional items and memorabilia, including models, gifts, and souvenirs other than those described above as allowable
- Cost of advertising or public relations designed and intended to promote the CE and not the SNP

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<sup>35</sup> TDA provides translated household meal applications and related documents at [www.squaremeals.org](http://www.squaremeals.org). USDA provides translated household meal applications at [www.fns.usda.gov/school-meals/applying-free-and-reduced-price-school-meals](http://www.fns.usda.gov/school-meals/applying-free-and-reduced-price-school-meals).

## **Program Operations, Printing and Reproduction Equipment or Services**

### *Allowable*

- Materials used to provide notification, maintain records, or other uses related specifically to program objectives
- Translation of materials for food service purposes<sup>36</sup>

## **Staff, Cafeteria Monitor**

### *Allowable*

- Funds used for personnel directly involved in operating or administering the SNP who have monitoring duties assigned to them as part of or integral to their regular SNP responsibilities

### *Unallowable*

- Funds used to pay meal service monitor salaries for personnel not directly involved in operating or administering the SNP and who do not have monitoring duties assigned to them as part of or integral to their regular SNP responsibilities

## **Staff, College Credits**

### *Unallowable*

- Cost incurred by an individual to obtain the college credits needed to meet the hiring professional standards

## **Staff, Employee Recognition**

### *Allowable*

- Reasonable expenses for recognizing employee efforts in the following conditions:
  - Activity is a part of the CE's established practice.
  - The recognition is for employees who work directly for the SNP department or whose salaries are paid out of the SNP fund.
  - Activities or items are intended to improve employee performance.
  - Activities or items are intended to improve employee-employer relations.

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<sup>36</sup> TDA provides translated household meal applications and related documents at [www.squaremeals.org](http://www.squaremeals.org). USDA provides translated household meal applications at [www.fns.usda.gov/school-meals/applying-free-and-reduced-price-school-meals](http://www.fns.usda.gov/school-meals/applying-free-and-reduced-price-school-meals).

## Staff, Entertainment

### *Allowable*

- Costs for amusements, social activities, gratuities, and related activities if the activities do have a specific programmatic purpose and are authorized in a TDA approved budget or written approval from TDA

### *Unallowable*

- Costs for amusements, social activities, gratuities, and related activities if the activities do not have a programmatic purpose and are authorized in a TDA approved budget or written approval from TDA

## Staff, Fringe Benefits

### *Allowable*

- Benefits for employees such as the following: leave, insurance, pension,<sup>37</sup> and unemployment plans provided the following criteria are met:
  - Established in written policies
  - Equitable allocation for related activities for all programs
  - Appropriate accounting procedures are in place

### *Unallowable*

- Benefits that include use of an automobile for personal use of an employee, including transportation to and from work, whether the cost is direct or indirect cost to the program and whether the cost is reported as taxable income to the employee

## Staff, Health and Welfare of Employees

### *Allowable*

- Costs for improving working conditions, employee-employer relations, employee health, and employee performance

*To be allowable these goals and actions must be described in the CEs written policy, and the cost must be equitably distributed to all programs involved in these activities not just the SNP.*

## Staff, Labor

### *Allowable*

- Payments for labor and other services directly related to SNP operation

*This includes employer's share of retirement, social security, insurance payments, and fringe benefits as well as severance required by law, employer-employee agreement, established institutional policy, or circumstances of the particular employment.*
- Prorated portion of the salaries of janitorial, maintenance workers, secretarial, and finance staff for services performed specifically for the SNP operation

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<sup>37</sup> The Texas Teacher Retirement System (TRS) has developed the *Supplemental Instructions for Child Nutrition Payment* tool to assist CEs in calculating retirement for SNP employees. Pension or retirement costs calculated with this tool are allowable.

## **Staff, Memberships, Subscriptions, and Professional Publications**

### *Allowable*

- Fees for memberships, materials, subscriptions, and professional activities used to benefit or improve the operation of the SNP

### *Unallowable*

- Fees for memberships in any civic or community organization as well as country club or social or dining club or organization
- Costs for membership in organizations whose primary purpose is lobbying

## **Staff, Personal Use**

### *Unallowable*

- Costs of goods or services for an employee's personal use even if reported as taxable income to the employee

## **Staff, Severance Pay**

### *Allowable*

- Payment in addition to regular salaries and wages for workers who are being terminated as long as each instance is (1) required by law and employer-employee agreement and (2) established by policy that constitutes an implied agreement between employee and employer

### *Unallowable*

- Payments that are in excess of normal severance pay paid by the employer upon termination of employment contingent upon a change in management control over, or ownership of the CE's assets

*Severance payment that is considered abnormal or for mass terminations are only allowable on a case-by-case basis. In these cases, the CE must contact TDA for assistance.*

## **Staff, Training and Conferences**

### *Allowable*

- Costs of meeting and conferences for which the primary purpose is the sharing of technical information including meals, transportation, facility rental, speaker's fees, identification of dependent-care resources, and conference registration fees

*This also includes the costs associated with meeting the professional standards requirements.*

### *Unallowable*

- Costs associated with obtaining a degree to meet the hiring standards
- Costs for daycare for employees attending training or conference

## Transportation, Meal Production Related Activities

### Allowable

- Reasonable costs associated with purchasing, transporting, and disposing of food items, meals, or stored items used to support the SNP

*[NOTE: Reasonable costs may be actual cost or per diem/mileage. Costs must be applied consistently with the CE's travel reimbursement policy and CE's policy for travel for all programs. If a CE allows the use of per diem, the per diem must be applied as described by the Texas Comptroller of Public Accounts. When mileage is paid, mileage must be paid based on the rate provided by the Texas Comptroller of Public Accounts.]<sup>38</sup>*

## Travel, Conferences and Training

### Allowable

- Expenses incurred for staff travel related to SNP improvement and to meet the professional standards requirements, such as workshops, conferences, and training programs

## Special Situations, Allowable and Unallowable Costs

The following guidance describes special situations for allowable and unallowable uses of SNP funds.<sup>39</sup>

### Allocable Cost Charged to Other Federal Awards

Any cost to a particular federal award that is allocable may not be charged to other federal awards<sup>40</sup> to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or terms and conditions of the federal awards; or for other reasons. However, this prohibition would not preclude a CE from shifting costs that are allowable under two or more federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the federal awards.

### Bad Debt

Bad debt is defined as debts which have been determined to be uncollectable. Uncollectible debt is debt that is not possible for the CE to collect—**debt that the CE has no reasonable probability or likelihood of collecting**. Bad debt is an unallowable cost to the program. The CE must resolve any negative balance (net cash resources) to the SNP with non-program funds at the end of the school year. Once debt is determined to be uncollectable any cost associated with legal services for that debt is also unallowable.

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<sup>38</sup> Per diem and mileage information is provided on the Texas Comptroller of Public Accounts website at <https://fmxcpa.texas.gov/fmx/travel/texttravel/rates/current.php>

<sup>39</sup> This list is not exhaustive. *Information Box 1, Guidance on Program Accounting and Financial Systems* provides a list of resources that provides additional examples of allowable and unallowable costs items.

<sup>40</sup> In this case, *other federal awards* refers to non-Child Nutrition Program awards.

After the CE's general funds have been used to clear bad debt for the SNP at the end of the school year, the CE may attempt to collect the bad debt to repay the general fund for the cost of clearing the bad debt. When the CE continues to collect the debt after CE has cleared the debt for the school nutrition program, any costs associated with continued collection efforts (staff and other costs) are not allowable costs for the school nutrition program. However, after the general fund covers the cost of bad debt, any funds collected for the debt accrue to the CE's general fund and not the school nutrition program.

### **Outstanding Student Debt, Delinquent Debt or Bad Debt**

When a student owes unpaid meal charges,<sup>41</sup> a debt is owed to the SNP. Since outstanding bad debt resulting from nonpayment for school meals or milk cannot be absorbed by the nonprofit school food service account, the CE must have written procedures/processes in place that demonstrate compliance, including, but not limited to the following: (1) methods the CE uses to communicate with households about unpaid charges and collection of debt; (2) routine CE actions when there are unpaid student meal or milk charges; (3) debt collection time period, not to exceed two school years, for bad debt; and (4) criteria for reclassification of delinquent student debt for unpaid meal charges to bad debt.

- *Household Response*— The CE must not continue to carry delinquent debt beyond the end of the school year if there is not a probability or likelihood that the debt will be collected.  
*[NOTE: A household's response to debt collection contacts may indicate whether there is a reasonable probability or a likelihood of collection.]*
- *Student Is Attending Class in the School System*—For there to be a probability or likelihood of the debt for student unpaid meal or milk charges to be collectible, the student who incurred the debt must continue to attend classes in the school system. If the student does not continue to attend classes in the school system, the CE must reclassify the delinquent debt for student unpaid meal or milk charges as bad debt by the end of the school year.

### **Debt Period Options for Student Unpaid Meal or Milk Charges**

Delinquent debt is debt the CE has the possibility of collecting, i.e., the CE's procedures/processes are structured so that there is a reasonable probability (likelihood) that the debt will be collected. Therefore, if the payment is likely to occur, the debt may be classified as delinquent debt.<sup>42</sup>

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<sup>41</sup> CEs must make the determination how many meals a student is allowed to charge or milk that may be charged under the Special Milk Program. See *Administrator's Reference Manual (ARM), Section 15, Meal Pricing* for additional information on the charge grace period required for NSLP and SBP operators.

<sup>42</sup> This includes debt incurred during SY 2017-2018.

However, if the payment is not reasonably probable or likely to occur, the debt must be reclassified as bad debt. CEs may choose to apply a one year or two year delinquent debt collection period for student unpaid meal or milk charges.

- *One School Year Period*—The CE may limit delinquent debt<sup>43</sup> for student unpaid meal or milk charges to the school year in which the student incurred the debt. If this option is used, at the end of that school year, any remaining debt for unpaid meal charges must be reclassified as bad debt.

When the debt for student unpaid meal or milk charges is classified as bad debt, the CE must resolve the bad debt at the end of the school year with non-SNP funds.

- *Two School Year Limitation*—The CE may carry delinquent debt<sup>44</sup> for student unpaid meal or milk charges forward one school year after the school year in which the student debt was incurred if there is a reasonable probability or likelihood that the CE will be able to collect the debt in the second school year. If this option is used, at the end of the second school year, any remaining debt for student unpaid meal or milk charges must be reclassified as bad debt.

When the debt for student unpaid meal or milk charges is classified as bad debt, the CE must resolve the bad debt at the end of the second school year with non-SNP funds.

### **Special Guidance, Student Unpaid Meal or Milk Charges**

CE's must use the following guidance for delinquent and bad debt for student unpaid meal or milk charges:

- *Alternate Method of Payment*—When a student has unpaid meal or milk charges, the CE must provide a method for the student (or the student's household) to pay for future meals or milk even through the student has an unpaid meal or milk balance.

*[NOTE: If the CE has an online payment system, the system must clearly communicate how funds paid into the online account will be applied when there is existing debt for student unpaid meal or milk charges.]*

If the student pays with cash and has change due, the cashier must give the student two options (1) apply the change to the student's account and (2) be given the change.

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<sup>43</sup> This includes debt incurred during SY 2017-2018.

<sup>44</sup> This includes debt incurred during SY 2017-2018.

- *Communication about Procedures/Policies to Households about Unpaid Student Debt*—The debt collection procedure/policy must be communicated to households.
- *Communication about Resolving Unpaid Student Debt*—The CE must have written procedures/processes for routinely contacting a household to prompt payment. Contacts may be made by electronic, regular mail, or phone methods. CEs must clearly communicate amounts owed to the household and provide information on how to resolve the unpaid meal or milk charge debt, including a repayment plan.
- *Online Student Account Systems*—If a CE uses an online system for communicating student account balances, the CE must offer households a non-online method for obtaining information about student meal or milk account balances.
- *Cost of Delinquent Debt Collection for Student Unpaid Meal or Milk Charges*—Reasonable costs associated with the collection of delinquent debts are allowable costs to the nonprofit school food service account. These costs cannot be added to the student's unpaid meal or milk charges.
- *Documentation for Efforts to Collect Student Unpaid Meal or Milk Charges*—CEs must retain documentation of contacts and results of contacts, all payments made, and all remaining balances that are reclassified as delinquent or bad debt.
- *Financial Accounting*—The CE must use an account payable debt system to document and track student unpaid meal or milk charges by individual student.
- *Grace Period for Student Charges (NSLP/SBP)*—The CE's grace period for student charges is applied each school year even if the CE has chosen the option to carry student unpaid meal charges forward to a second school year, when appropriate.
- *Student Unpaid Meal or Milk Charges Paid by a Person or Entity Other Than the Household*—If the CE allows individuals or entities to cover unpaid student debt, the CE must have a method to document when these funds are applied to a student's meal or milk account and how the household is notified.
- *Transfer of Funds to Clear Bad Debt*—Once debt for student unpaid meal or milk charges is reclassified as bad debt, the CE must transfer funds to cover the bad debt from a non-SNP funding source to the nonprofit school food service account. Documentation demonstrating the transfer is required.

If the CE intends to continue to collect the debt after the transfer of funds, the SNP should provide individual student debt balances and payment information to the CE staff who will seek repayment.

### **Changing Funding Source for a Payment**

If a CE pays a bill with funds from the SNP account that was not previously charged to the SNP account, the CE must add an equal amount of nonfederal funds to the SNP account for the payment to be an allowable cost.<sup>45</sup>

### **Employee Timekeeping**

CEs are expected to ensure that salary and wage expenses are correctly charged to the SNP. CEs must have a timekeeping record system, paper or electronic, that accurately reflects the work performed by employees for the SNP.

The timekeeping record system must meet the following requirements:

- Be supported by a system of internal controls which provides reasonable assurance that the charges are accurate, allowable, and properly allocated.
- Be incorporated into the CE's official records that include a hand or electronic signature by the employee and the supervisor certifying the accuracy of the records.
- Comply with the established accounting policies and practices put in place by the CE to ensure program integrity.

The timekeeping record system must provide the following information:

- Actual hours worked, not estimated hours worked, for both hourly and salaried employees compensated by the CE for each pay period, integrating compensation provided by SNP funds and non-SNP funds.

**Charging a percentage of time to the SNP without a method to record actual time is an unallowable cost.**

*[NOTE: For budget planning, it is common to assign time by percentage, but when charging the nonprofit school food service account for labor costs, it must be done by actual time.]*

- Distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on SNP and non-SNP projects.

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<sup>45</sup> Since CEs commonly use electronic accounting procedures, CEs should take care to document electronic transfers adequately.

## Maintenance and Repair Costs (Not Capital Expenditures)

Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment to promote efficient operating conditions do not require TDA approval.

Maintenance and repair costs include, but are not limited to, the following:

- Repainting a wall when new kitchen equipment is installed
- Restriping lines or adding graphics in the service area that help students understand how to move through the service line
- Routine freezer and cooler maintenance contracts
- Replacing tiles when there is water damage in the service area

However, costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures. If this is the case, see *Capital Expenditures (Equipment and Facility Improvement)* subsection in this section for additional information on how to request approval for a capital expenditure.

If the CE has a question about whether a cost is for maintenance and repair or a capital expenditure, the CE should contact its ESC or TDA.<sup>46</sup>

### *Special Guidance, Painting and Graphics*

Allowable costs associated with painting and graphics must be specifically associated with an SNP operational objective.

Examples of Unallowable and Allowable Maintenance and Repair Costs for Painting and Graphics	
<i>Unallowable</i>	<i>Allowable</i>
<ul style="list-style-type: none"><li>– Repainting the cafeteria walls and adding graphic elements not associated with SNP operation</li></ul>	<ul style="list-style-type: none"><li>– Repainting a wall that was renovated to allow for the installation of new SNP equipment</li><li>– Appropriate proportion of painting costs specific to SNP operation</li></ul>
<ul style="list-style-type: none"><li>– Adding artwork to the walls in the meal service area that is not specific to the school meal program (murals or school mascots)</li></ul>	<ul style="list-style-type: none"><li>– Adding artwork to walls in the meal service area that is specific to the operation of the school meal programs (meal pattern information)</li></ul>

If the cost for the painting or graphics is part of a larger project that includes a portion of the work that is associated with an SNP operational objective, only that portion of the cost that is appropriate to the SNP is allowable.

<sup>46</sup> The Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page which follows the Table of Contents provides the email address to submit questions about capital expenditures.

## Capital Expenditures (Equipment and Facility Improvement)

Capital expenditures are costs exceeding \$5,000 for a single item that are incurred to acquire (1) capital assets or equipment or (2) to make improvements, additions, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.<sup>47</sup>

USDA requires CEs to obtain approval<sup>48</sup> before incurring the cost for capital expenditures in the following conditions:

1. *Capital Asset or Equipment*—Cost that exceeds \$5,000 for a single item.
2. *Capital Improvements*—Cost that exceeds \$5,000 for an addition, improvement, modification, replacement, reinstallation, renovation, or alternation to a capital asset<sup>49</sup> that materially increases the value or useful life of the asset.

Costs which are classified as capital improvements are intended to achieve one the following results:

- Make the property better by removing a defect, adding enhancements, or increasing strength or capacity.
- Restore the property to a condition existing before the property was acquired or rebuilding to a like-new condition.
- Adapt the property to a new or different use.

## Capital Expenditures (Equipment and Facility Improvement) Request for Approval

CEs must request and receive approval before paying for capital expenditures—equipment or facility improvement—with a cost of \$5,000 or more per item.<sup>50</sup>

### *Procedure to Request a Capital Expenditure (Equipment or Improvement) Approval*

To request approval for a capital expenditure, CEs must complete the capital expenditure form located in TX-UNPS under the Applications tab, *Capital Expenditure Request* hyperlink.

#### *Request by Item Location*

Requests for capital expenditures must be made by location/site. For each cost item provide the type of item, age, quantity, cost per item, total cost, and percentage paid by SNP funds. Use the Comment field (Number 6) to

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<sup>47</sup> If the expense is an ordinary maintenance or repair cost, see the guidance provided in the *Maintenance and Repair Cost (Not Capital Expenditures)* subsection in this section.

<sup>48</sup> CE must complete the *Capital Expenditure Request* located in TX-UNPS | Applications | Capital Expenditure Request.

<sup>49</sup> Assets are defined as *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)*.

<sup>50</sup> While capital expenditures for equipment or improvement for more than \$5,000 per item require prior approval, CEs must still ensure that equipment or improvements that cost less than \$5,000 are allowable costs. See the *General Expenditures—Allowable and Unallowable* for more information on this topic.

describe how the item will be used and why it is a necessary purchase.

#### *Indication of Capital Improvement Expenditure*

If the CE is requesting approval for a capital improvement expenditure, the CE will complete the *Capital Expenditure Request* form in TX-UNPS and record a note in the Comment section stating that the request is for a capital improvement expenditure.

*[NOTE: If the Type of Item dropdown menu does not contain a descriptor that matches the cost item or if the best descriptor is Other, the cost is likely a capital expenditure for improvement request.]*

#### *Corrections to Form*

TX-UNPS does not allow for correction of this form after it has been submitted. A new form will need to be submitted.

#### *Approval or Disapproval*

Approval is granted on a case-by-case basis. Approval or disapproval for the request will be indicated in TX-UNPS. If a CE incurs and pays for the cost of a capital expenditure without the required approval, the cost is unallowable.

### **Capital Expenditures for Equipment, Special Guidance**

A capital expenditure for equipment request is an expense of \$5,000 or more for an item that is intended to be used for multiple years. For capital expenditures for equipment, CEs must use the following guidance:

#### *Charge Period*

Capital expenditures for equipment must be charged in the period in which the expenditure is incurred unless TDA approves a payment structure that spans multiple funding years.

#### *Direct Cost*

Capital expenditures for equipment must be coded as a direct cost; they cannot be classified as an indirect cost.

### *Purpose*

For this cost to be allowable, capital expenditures for equipment must be specifically linked to operation of the SNP.

*[NOTE: When a CE provides information on how the cost item will be used and why it is necessary in the Comment field (Number 6), lack of specificity can lengthen the approval process. Specific detailed descriptions will assist staff in making a determination in a more timely manner.]*

### *Proportion of Cost*

If the equipment will be used by the SNP and other programs, the CE must charge only the proportional amount to the nonprofit school food service account that is consistent with SNP's use of the equipment.

## **Capital Expenditures for Improvements, Special Guidance**

SNP capital expenditures for improvements to land, buildings (cafeteria and food preparation space) which materially increase the value or useful life of facilities and exceed \$5,000<sup>51</sup> are unallowable except with the prior approval of the TDA.<sup>52</sup> This requirement applies to improvements, renovations, construction, and other activities that are not considered to be repairs to the existing cafeteria and meal preparation space. In all cases, when the CE is unsure if the expense will be considered to be an improvement to the land, building, or equipment which will materially increase value of useful life, the CE should contact its ESC or TDA.<sup>53</sup>

For capital improvement costs, CEs must use the following guidance:

### *Charge Period*

Capital expenditures for improvements must be charged in the period in which the expenditure is incurred unless TDA approves a payment structure that spans multiple funding years.

### *Direct Cost*

Capital expenditures for improvement must be coded as a direct cost; they cannot be classified as an indirect cost.

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<sup>51</sup> All costs for renovations, construction, improvement, or other activities that are less than \$5,000 must still be an allowable cost to be charged to the nonprofit school food service account. See the *General Expenditures—Allowable and Unallowable Costs* subsection in this section for more information on what costs are allowable.

<sup>52</sup> If approved, TDA will submit the request to USDA. USDA must provide final approval for capital improvement expenditures before costs are incurred.

<sup>53</sup> See the Contact Information for the Texas Department (TDA), Food and Nutrition page which follows the Table of Contents in this section for contact information.

### *Purpose*

For these expenditures to be allowable, capital expenditures for improvements must be specifically linked to operation of the SNP.

*[NOTE: When a CE provides information on how the cost item will be used and why it is necessary in the Comment field (Number 6), lack of specificity can lengthen the approval process. Specific detailed descriptions will assist staff in making a determination in a more timely manner.]*

### *Proportion of Cost*

When determining whether a requested capital expenditure for improvement is allowable, CEs need to consider the proportion of use. While it is true that the cafeteria and food preparations area are used for meal service, they are also often used for other purposes—meetings, trainings, special events, instruction, and such. When the space for the improvement can be specifically linked to other programs, the nonprofit school food service account must pay only the proportion of the cost that is consistent with the SNP's use of the area.

### **Equipment/Property, Care and Maintenance**

CEs must use the following guidance for equipment/property bought with SNP funds:

- Must retain equipment/property records that include the following information:
  - Description of the equipment/property
  - Serial number or other identification number
  - Source for the equipment/property
  - Entity holding the title, if applicable
  - Acquisition date
  - Cost of the equipment/property
  - Location
  - Percentage of federal funds in the cost of the equipment/property
  - Disposition data including the date of disposal and sale price of the equipment/property if sold
- Must take a physical inventory of the equipment/property, and the results reconciled with the records at least once every two years.
- Must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment/property. Any loss, damage, or theft must be investigated.
- Must develop adequate maintenance procedures to keep the equipment/property in good condition.

## **Equipment/Property, Disposal**

Disposition of equipment/property should follow these requirements:

### *Items Valued Less Than \$5,000*

Items of equipment/property with a current per unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the CE. However, if the item is sold, all funds from the sale must be credited to the SNP account.

### *Items Valued More Than \$5000*

Items of equipment/property with a current per unit fair market value in excess of \$5,000 may be retained or sold. If sold and the SNP paid the total cost of the equipment, the SNP account must be credited for the full amount received for the equipment/property. If sold and the SNP paid a percentage of the total cost for the equipment/property, the SNP must receive a portion of the sale price (percentage of cost) that is equal to the portion the SNP paid (percentage of cost) toward purchase—multiply the current market value or proceeds from sale by SNP share of the equipment/property.

### *Retired Equipment/Property That Will Not Be Replaced*

Equipment/Property purchases for use in the SNP program must be used by the CE in the program(s) for which it was acquired for as long as it is needed. When equipment/property is no longer needed by the SNP and will not be replaced, other Child Nutrition Programs (CNP) have first preference in using the equipment/property. If the retired equipment/property is donated to another CNP, the use of the equipment/property must not interfere with operation of the SNP.

### *Retired Equipment/Property That Is Replaced*

If acquiring replacement equipment/property, the CE may also use the retired equipment/property as a trade-in or sell the property and use the proceeds to offset the cost of the replacement equipment/property.

The CE must establish proper procedures for the sale of retired or replaced equipment/property to ensure the highest possible return if the equipment/property is sold or donated. All funds from the disposition of equipment/property must be deposited into the SNP account. TDA will review records related to the disposal of equipment/property as part of the agency's effort to monitor program integrity.

### **Local Wellness Policy**

Nonprofit school food service account funds may be used to implement local wellness policies if the local school wellness policy is directly supporting the operation or improvement of the SNP. In cases where only a portion of the local school wellness policy activities are a direct support to the operation or improvement of the SNP, then, only that portion of cost must be charged to the nonprofit school food service account. This includes the nonprofit school food service account covering all or a portion of a local wellness policy coordinator. Please see the Employee Timekeeping subsection in this section for additional guidance on how a local wellness policy coordinator's time would be covered.

### **Nutrition Education Expenses**

Nutrition education and related activity expenses are allowable if the expense meet the following criteria:

1. Are reasonable, necessary and allocable as defined in this section
2. Support the operation of and/or improvement of the SNP objectives to serve nutritious meals that meet the meal pattern.

### **Universal Free Feeding Programs**

CEs may choose to allow sites to provide meals to all students at no charge—universal free feeding—at breakfast, lunch, both breakfast and lunch, or afterschool snack. CEs may operate universal free feeding under the Community Eligibility Provision (CEP), Special Provision 2 (P2), or under standard counting and claiming.

If the CE adopts a universal free feeding program, the CE agrees to supplement SNP funds with nonprogram funds if the cost of operating the universal free feeding program exceeds SNP revenue. Nonprogram funds include the following revenue types:

- Any portion of State revenue matching funds that exceeds the minimum requirement
- Profits from a la carte sales
- Cash donations (such as Angel Funds)
- In-kind contributions from outside sources, such as volunteer services

# Farm to School and School Farm or Garden Expenses and Revenue

SNP funds may be used to support farm to school activities, including school gardens, if the expenditure is an allowable cost. The *Farm to School/School Garden Allowable Cost Assessment Chart* may be used by the CE to determine if farm to school or school garden expenses are allowable.

Farm to School/School Garden Allowable Cost Assessment Chart		
<i>If the answer is no, the cost is not allowable.</i>		
<i>SNP Program Objectives</i>		
– Do the farm to school or school garden activities support the SNP objectives and/or promote program improvement? <i>(Includes nutrition education)</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<i>Support the Operation or Improvement of the School Meal Program</i>		
– Is the purchase for the farm to school or school garden activities helping to support the operation of or improvement of the school meal program	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<i>Reasonable</i>		
– Are the costs associated with these activities reasonable—that is <u>proportional</u> to the benefits and results?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
– Are the costs associated with SNP activities or support for or improvement of the SNP program?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<i>Compliance with NSLP/SBP Meal Pattern ^</i>		
– Are the costs associated with efforts aligned with or supportive of NSLP/SBP meal pattern compliance? <i>(Includes, but is not limited to, activities that enhance students' preference for fruits and vegetables, increase the likelihood of students eating fruit and vegetables offered on the serving line, and nutrition education activities.)</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<i>Proportional Allocation for Staff Salaries*</i>		
– In cases where only a portion of the farm to school or school garden coordinator's time is spent directly in support of the SNP operation, does the site cover the portion of the coordinator's salary that is deemed necessary, reasonable, and allocable?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
^ Net cash resources and prioritizing funds to support the operation or improvement of the school meal program.		
* Staff positions strictly supporting horticulture classes, Future Farmers of American, or other school associations cannot be funded by the SNP account.		

### **Supplies or Equipment for School Farms or Gardens**

If the school farm or garden is used within the context of the school meal programs and serves the purpose of supporting the operation of or improving the school meal program, supplies and equipment for the school farm or garden may be purchased with funds from the SNP account.

Supplies (i.e., seeds, fertilizer, water cans, or rakes) and equipment (i.e., hoop houses and high or low tunnels) are allowable if (1) the CE has assessed the purchase using the questions from the *Farm to School/School Garden Allowable Cost Assessment Chart* and determined that the costs are allowable and (2) the products grown in the school garden or farm are used within the context of the SNP.

### **Building Structures**

The purchase of land or buildings is not allowable unless the CE has received approval prior to purchase. To obtain approval, the CE must submit an approval request to TDA. TDA will review the request and forward it to USDA for approval.

### **Intergovernmental Agreement**

CEs may enter into an intergovernmental or interdepartmental agreement with a school farm or garden local government agency<sup>54</sup> to purchase products from the garden. The agreement may outline the price for the produce, relative timelines, and expectations of both parties. However, before establishing an agreement, the CE must conduct a price analysis to ensure that products purchased from the garden are purchased at reasonable prices.

### **Procured Farm to School Products**

CEs may conduct procurement for garden produce even if the purchase falls below the small purchase threshold. Geographic preference may be used.<sup>55</sup> The CE must still ensure that products purchased from the garden are purchased at reasonable prices.

### **Sale of Produce from a Garden Funded by the SNP**

If the CE sells produce from a school garden or farm that is funded by the SNP, the revenue must accrue back to the SNP account. If the CE contributes a proportion of the total cost, the amount accrued back to the SNP may be proportional to the amount of the SNP's contribution.

### **Use of Fresh Fruit and Vegetable Program Funds (FFVP)**

CEs must not use funds from the FFVP to purchase supplies or equipment for school gardens. FFVP funds may be used for all students attending the elementary school or may be targeted to a specific grade or grades.

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<sup>54</sup> Government entities include such agencies as local recreation department.

<sup>55</sup> See *Administrator's Reference Manual, Section 17, Procurement* for additional information on local preferences.

## Proportion of Program/Nonprogram Revenue and Food Cost

Each year, CEs must assess their revenue from program food (reimbursable meals) and nonprogram food (non-reimbursable meals) to ensure that nonprogram food revenue generates at least the same proportion of revenue as it contributes toward total food costs.<sup>56</sup>

### Revenue

For the program/nonprogram proportion, revenue is all money that is provided to the SNP account. This includes, but is not limited to, the following:

- Federal reimbursement
- State or local funds, such as per meal subsidies and State revenue matching funds
- Children's payments for reimbursable meals and a la carte sales
- Credits, rebates, and discounts and USDA Foods values credits
- Income from catering, adult meals, vended meals
- Payments for items purchased for fund raisers and vending machines

### Nonprogram Revenue

For the program/nonprogram proportion, nonprogram sales include, but are not limited to, the following:

- A la carte items sold in competition with reimbursable meals
- Adult meals
- Catered or vended meals
- Items purchased for fundraisers, vending machines, and school stores

### Costs

For program/nonprogram proportion, the CE will use only the cost of the actual food. The CE will not include labor or other costs in this calculation.

*[NOTE: If the menu item is made from scratch, the CE would need to determine the price of all ingredients to calculate the food costs.]*

### Cost for Each Meal

Calculating program and nonprogram food revenue and costs is essential to knowing the cost of each item served and each meal served.

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<sup>56</sup> Section 205 of the *Healthy, Hunger-Free Kids Act of 2010*. The National Food Service Management Institute's *NFSMI Financial Management Information System* booklet (2014) provides various tools and worksheets to assist CEs in tracking program/nonprogram revenue and food costs. Available at [www.nfsmi.org/DocumentDownload.aspx?id=955](http://www.nfsmi.org/DocumentDownload.aspx?id=955). See the *Administrator's Reference Manual, Section 15, Meal Pricing* for additional information on topics related to the proportion of program /nonprogram costs and revenues, including Paid Lunch Equity.

If the nonprogram food revenue is not proportional to program food revenue, the CE must take action immediately to make the program/nonprogram revenue proportional. *Proportional* means that the food costs for nonprogram foods must be equal to or greater than program food costs, and nonprogram revenue must be equal to or greater than program revenue. TDA has developed *Program/Nonprogram Revenue and Cost Proportion Calculation Worksheet*<sup>57</sup> to assist CEs in calculating the proportion of program/nonprogram revenue and food costs.

## Steps for Calculating Proportion of Program/Nonprogram Revenue

The CE should calculate the proportion of total nonprogram food costs by taking the following actions:

- Step 1:** Determine the total program and nonprogram cost and revenue.
- Step 2:** Determine the percentage of total program and nonprogram food cost.
- Step 3:** Determine the percentage of nonprogram and revenue and food cost Based on total revenue and food cost.
- Step 4:** Compare the total nonprogram revenue and food cost percentages to ensure that the total nonprogram food cost and revenue are proportional to the total food cost and revenue.

The *Program/Nonprogram Revenue/Food Revenue and Cost Calculation Chart* illustrates an example of the calculation to determine the correct proportion of program/nonprogram revenue/food cost.

Program/Nonprogram Revenue and Food Cost Proportion Calculation Chart				
<i>Step 1: Determine the Total Program and Nonprogram Cost and Revenue.</i>				
– Sum the <i>Total Program Food Cost</i> and the <i>Total Nonprogram Food Cost</i> to calculate the <i>Total Food Cost</i> .				
– Sum the <i>Total Program Revenue</i> and the <i>Total Nonprogram Revenue</i> to calculate the <i>Total Revenue</i> .				
<b>Total Program Food Cost</b>	+	<b>Total Nonprogram Food Cost</b>	=	<b>Total Food Cost</b> (Program & Nonprogram Combined)
\$122,359		\$301,854		\$424,213
<b>Total Program Revenue</b>	+	<b>Total Nonprogram Revenue</b>	=	<b>Total Revenue</b> (Program & Nonprogram Combined)
\$160,987		\$303,697		\$464,684

<sup>57</sup> Available at [www.squaremeals.org](http://www.squaremeals.org).

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**Step 2: Determine Percentage of Total Program and Nonprogram Food Costs.**

- Divide the *Total Program Food Cost* by the *Total Food Cost* to calculate the *Total Program Food Cost Percentage*.
- Divide the *Total Nonprogram Food Cost* by the *Total Food Cost* to calculate the *Total Nonprogram Food Cost Percentage*.

<b>Total Program Food Cost</b>	÷	<b>Total Food Cost</b> (Program & Nonprogram Combined)	=	<b>Total Program Food Cost Percentage</b>
\$122,359		\$424,213		28.84%
<b>Total Nonprogram Food Cost</b>	÷	<b>Total Food Cost</b> (Program & Nonprogram Combined)	=	<b>Total Nonprogram Food Cost Percentage</b>
\$301,854		\$424,213		71.16%

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**Step 3: Determine the Percentage of Nonprogram Revenue and Food Cost Based on Total Revenue and Food Cost.**

- Divide the *Total Nonprogram Revenue* by the *Total Revenue* to calculate the *Total Nonprogram Revenue Percentage*.
- Divide the *Total Nonprogram Food Cost* by the *Total Food Cost* to calculate the *Total Nonprogram Food Cost Percentage*.

<b>Total Nonprogram Revenue</b>	÷	<b>Total Revenue</b> (Program & Nonprogram Combined)	=	<b>Total Nonprogram Revenue Percentage</b>
\$303,697		\$464,684		65.36%
<b>Total Nonprogram Food Cost</b>	÷	<b>Total Food Cost</b> (Program & Nonprogram Combined)	=	<b>Total Nonprogram Food Cost Percentage</b>
\$301,854		\$424,213		71.16%

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**Step 4: Compare the Total Nonprogram Revenue and Food Cost Percentages to ensure that the Total Nonprogram Food Cost and Revenue are proportional to the Total Food Cost and Revenue.**

- If the *Total Nonprogram Revenue Percentage* is greater than or equal to the *Total Nonprogram Food Cost Percentage*, no action is required.
- If the *Total Nonprogram Revenue Percentage* is not greater than or equal to the *Total Nonprogram Food Cost Percentage*, the CE must take action to make the *Total Nonprogram Revenue Percentage* and *Total Nonprogram Food Cost Percentage* proportional.

<b>Total Nonprogram Revenue Percentage</b>	is less than	<b>Total Nonprogram Food Cost Percentage</b>	In this case, the food cost is not proportional to the revenue; the CE must take action to address the disproportion.
65.36%		71.16%	

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CEs may use the *Program/Nonprogram Revenue Proportion Calculation Worksheet* to calculate the proportion of program and nonprogram income and expenses.<sup>58</sup>

## **Adjusting the Proportion for Program/Nonprogram Revenue/Costs**

The CE may adjust the nonprogram revenue in a variety of ways including, but not limited to, increased prices for nonprogram food items and contribution of funds from non-SNP sources. The CE must use the following guidance in establishing proportional program/nonprogram revenue and costs:

### **Different Nonprogram Foods**

A CE may choose to increase the price of one type of nonprogram food revenue more than another type. This is permissible as long as the proportional requirement is met.

### **Direct or Indirect Charges**

The CE cannot count direct or indirect charges as a contribution of nonprogram funds if the CE does not actually add the funds to the SNP account. This transaction must be documented before applying the contribution to the proportional requirement.

### **Special Circumstances**

If the CE's normal months of operation are impacted by a natural disaster, the CE may use a representative month to determine revenue or income for the fiscal year. The CE should contact TDA if this occurs.

## **Exclusive Contracts**

An *exclusive contract* is a contract between a CE and a distributor/vendor that prevents the CE, and the SNP administered by the CE, from buying or selling similar products from other distributors/vendors. The distributor/vendor may also offer the CE financial, product, or service incentives for signing an exclusive contract. USDA has provided the following guidance and clarifications for exclusive contracts:

1. If the exclusive contracts do not involve the SNP account funds, there are no federal SNP procurement issues involved. State law or local regulation and policy may apply to the procurement of an Exclusive Contract. TDA strongly recommends that the CE consult its attorney before entering into a solicitation or other type of procurement for an Exclusive Contract.
2. If any SNP products are purchased via the exclusive contract, then all federal procurement requirements must be met.

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<sup>58</sup> Form available on [www.squaremeals.org](http://www.squaremeals.org)

3. Additionally, if SNP products are included in the contract, any rebates, commissions, or any other payments back to the CE or CE-related organizations must be reimbursed to the SNP account on a prorated basis. The distributor/vendor must provide the CE with the documentation necessary to assure that rebates, commissions, or other payments are properly applied.
4. Many of these contracts are multi-year contracts.<sup>59</sup> School procurement officials should consider the impact of multi-year contracts, as opposed to single-year contracts, on the purchase of beverage and snack items.
5. School districts with existing contracts in place that include SNP products must reimburse the SNP account its pro-rata share in accordance with Item 3 above for the current and subsequent school years and maintain appropriate documentation to demonstrate compliance with this requirement.

## **Loans from the SNP Account to the CE**

SNP funds may be loaned to the CE on a short-term basis (a school year) as long as the loan does not jeopardize the integrity of the foods service program to students and the balance of the fund is not reduced below operational costs for a three-month period —it must be repaid within the fiscal year in which the loan is made. Multi-year obligations are not permissible.

### **Interest**

The CE must pay interest at the prevailing loan rate to the SNP account for funds loaned from the SNP account. The rate of interest charged on the loan must be equal to the rate that would have been paid if the loan were obtained from a commercial source, and no less than the of interest the SNP would have earned by keeping the SNP funds deposited in an interest-bearing account.

### **Loan Stipulations**

The loan agreement must contain such stipulations as the purpose; interest rate (simple or compounded); the repayment schedule for the principal; and interest and any penalties for late payment.

### **Loan Records Retention**

The original loan agreement, duly executed, and the payments for the principal and interest must be maintained and be on file for the duration of the loan plus the retention period as described in the *Records Retention* subsection in this section.

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<sup>59</sup> Other than food service management companies.

## Loans from the CE Account to the SNP, Retroactively Determined As a Loan

CEs must not retroactively determine that funds transferred from the general fund to cover SNP deficits are a loan subject to repayment. For a liability to exist, a bona fide loan agreement between the CE and SNP must be in effect at the time that the funds are transferred. Records that demonstrate an existing agreement include a written agreement and financial records that document the contributions from the CE to SNP as well as from the SNP to the CE.

## Financial Single Audit Requirement

Federal law requires that all non-federal entities that expend \$750,000<sup>60</sup> or more in federal awards<sup>61</sup> have an annual audit or single (organization-wide) audit<sup>62</sup> or a program specific audit each year as described in the *Audit, Program Specific Audit* subsection in this section. All audits must be conducted in accordance with Generally Accepted Accounting Auditing Standards (GAAS).

Because the rules and regulations applying to audits are highly technical, and different auditing requirements apply by type of entity and amount of funds received, this subsection only provides an overview for the audit requirements for CEs administering NSLP or SBP. See *Information Box 1* in this section for additional information on federal resources on audits.

## Records Reviewed in a Single Audit

At a minimum, auditors will review the following records:

### General Accounting Documentation

- Records (receipts, ledgers, files) of food, milk, nonfood items and purchased equipment
- Bank statements
- Procurement documentation, including receipt of credits, discounts, and rebates as well as the value of USDA foods

*[NOTE: When procurement relates to a major program in an audit, the scope of the audit must include determining whether these transactions are in compliance with federal statutes, regulations, and the terms and conditions of the federal award.]*

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<sup>60</sup> 2 CFR §§200.110(b) and 200.501(a), changed from \$500,000 to \$750,000 for all federal awards made after December 26, 2014

<sup>61</sup> In this case, *Federal Award* means federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal agencies or indirectly from pass-through entities. TDA is a pass-through entity for the SNP (2 CFR Part 200).

<sup>62</sup> A financial audit is not considered to be the same as a single (organization-wide) audit.

### Staff Cost Documentation

- Labor costs, including fringe benefits, for all staff involved in food service

### Food Production Documentation

- Food service equipment depreciation schedules, if claiming depreciation
- Records of reimbursements including claim forms and worksheets
- Records describing the value of USDA foods
- Records accounting for food sold as part of the meal program—a la carte, milk, and reimbursable meals, catering, a la carte, or other food services
- Records describing food and nonfood inventories

### Program Participation Documentation

- Records providing participant data

## Financial Single Audit Due Date

TDA<sup>63</sup> must receive an acceptable audit within nine months of the last day of the CE's accounting fiscal year if the CE is required to submit an annual audit. Each CE must use the accounting fiscal year that its organization follows to determine the audit due date.

*For Example:*

<i>Calendar Year</i>	<i>or</i>	<i>NSLP Fiscal Year</i>	<i>or</i>	<i>Federal Fiscal Year</i>
<i>January 1 to December 31</i>		<i>July 1 to June 30</i>		<i>October 1 to September 30</i>

- *If a CE's accounting fiscal year ends on December 31, its audit report is due before September 30 of the following year.*
- *If a CE's accounting fiscal year ends June 30, its audit report is due before March 31 of the following year.*
- *If a CE's accounting fiscal year ends September 30, its audit report is due before June 30 of the following year.*

*[NOTE: CEs should review and accept the audit report before sending it to TDA. TDA requires only the final draft of the audit report.]*

<sup>63</sup> CEs must send one printed copy or an electronic copy on a CD to the TDA address on the Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition page in this section. Because of the size limitation on incoming email to TDA, TDA does not recommend that CEs email their audit files to TDA. To ensure that the document is delivered correct, add *ATT: Business Operations—Audit* to the mailing address.

## Financial Single Audit Due Date Reminder

TDA will provide RCCIs and private schools<sup>64</sup> two notifications about the CE's audit due date:

- First reminder—three months prior to due date
- Second reminder—one month prior to due date

## Financial Single Audit, Public School Districts

The Texas Education Agency (TEA) conducts single (organization-wide) audits for all Texas public school districts and charter schools and shares those audits with TDA as part of a formal agreement between the two agencies. Since TDA is able to access this report through its cooperative agreement with TEA, TEA's single audit fulfills the audit requirement for these CEs.

## Financial Single Audit, Program Specific Audit

A CE that receives more than \$750,000 may elect to have a program specific audit. To be eligible for a program specific audit, the CE must meet two conditions.

1. The federal program's laws, regulations, or grant agreement must allow the CE to conduct a program specific audit.
2. The CE must administer only one federal award program as defined by the following criteria:

*If all federal awards have the same Catalog of Federal Domestic Assistance (CFDA) number,*

*If a CFDA is not assigned for the federal awards and all awards come from the same agency and are made for the same purpose,*



*the program(s) are considered to be one program for purposes of a program specific audit.*



*For Example: A CE administers NSLP and SBP as well as receives USDA Foods. All of these programs share the same CFDA number. In this case, the CE can perform a program specific audit.*

*A CE administers NSLP and SBP, receives USDA Foods, and administers a Head Start program. Some of the programs have CFDA numbers; others do not. While the NSLP, SBP, and USDA Foods may be treated as one program under the criteria, the Head Start is funded through a different federal agency and has a different purpose. In this case, the CE cannot perform a program specific audit.*

If a program specific audit is conducted, the audit report must be sent to TDA as described in the *Financial Audit Due Date* subsection in this section or to USDA upon request.

<sup>64</sup> Audits for public and charter schools are conducted by the Texas Education Agency; therefore, these notices only go to RCCIs and private schools.

## Other Audits

TDA retains the right to conduct additional audits as necessary.

## Federal Audit Clearinghouse Requirement for Single Audits

CEs must submit their final single audit to the Federal Audit Clearinghouse each year. All fiscal year 2015 audits must include the standard audit finding reference number format and must be submitted in an unlocked, unencrypted, and text-searchable PDF format. The Federal Audit Clearinghouse provides detailed information on the new requirements and how to upload a single audit at [https://harvester.census.gov/facides/\(S\(jp5xqdd1nxejdzgdbkrijrtp\)\)/account/login.aspx](https://harvester.census.gov/facides/(S(jp5xqdd1nxejdzgdbkrijrtp))/account/login.aspx).

*[NOTE: Public and charter schools are not required to submit an audit or submit their audits to the Federal Audit Clearinghouse unless they participate in CACFP and expend \$500,000 [\$750,000 for audits of fiscal years beginning on or after December 26, 2014 ] for new or modified awards] or more in federal funds.]*

## CE Response to Single Audit Findings, Corrective Action Plan

All CEs receiving a single audit are responsible for follow-up to the single audit which includes the CE's creation of a corrective action plan to address all audit findings. This applies to CEs whose single audit is administered by the Texas Education Agency (TEA), another state or federal agency, a sponsoring organization, or the CE itself. When CEs develop their corrective action plan for addressing audit findings, the plan must span audit findings for multiple years. This allows the CE and anyone reviewing the audit plan to address any issues that carry forward over multiple years. Moreover, the corrective action plan must describe how the CE will prevent further violations for all audit findings.

### 60 Calendar Day Claim Rule

When there is a single audit finding<sup>65</sup> and the CE must adjust prior claims upward or downward, the 60-Calendar day claim rule is suspended. In this circumstance, the CE must contact TDA to arrange for the adjusted claims.

The CE must prepare the following documentation as part of its corrective action plan to address audit findings:

1. **Audit Summary Schedule or Work Plan for Prior Audit Findings That Have Not Been Corrected**—The summary work plan must include the following information:
  - Reference number and the year for each audit finding
  - Explanation of the status of actions to address each finding

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<sup>65</sup> The single audit conducted under the Texas Education Agency regulations is not the Administrative Review, Procurement Review, or Administrative Financial Review conducted by TDA. See *Administrator's Reference Manual (ARM)*, Section 23, *Administrative Review (AR)* for additional information on corrective action associated with a compliance review.

- Planned corrective action for any finding that has not be corrected as well as any partial corrective action that has been taken
  - Explanation of any corrective action that is different from the planned corrective action described in the summary work plan for previous audit
  - Explanation of why a finding, as applicable, is no longer valid or does not warrant further action.
2. **Audit Corrective Action Plan for the Current Year’s Audit Findings**—The corrective action plan must include the following:
- List of all findings by assigned number
  - Description of corrective action to be taken for each finding
  - Name of contact person responsible for each corrective action
  - Anticipated completion date for each corrective action
  - Explanation of why the CE does not agree with any finding submitted by the auditor and why corrective action is not needed
  - Submission of amended claims if audit findings determine submitted claims are incorrect.

The CE’s response to the audit findings must be retained onsite as described in the *Records Retention* subsection in this section and available for review on request.

## Using School Meal Facilities for the Elderly Nutrition Programs or Other Non-School Nutrition Programs

CEs are also permitted to use NSLP facilities, equipment, and personnel to support elderly nutrition projects. If CEs use their facilities for this purpose, they must meet the following financial requirements:

- Have a system in place that allows the CE to distinguish SNP costs and revenues from the costs and revenues of other nutrition activities, including Nutrition Services Incentive Program (NSIP).
- Ensure that any cost involved with feeding activities for the elderly are not included in costs associated with the SNP.
- Use USDA Foods according to regulations and instructions.
- Ensure that any food and/or supplies<sup>66</sup> purchased with SNP funds are not used for feeding activities for the elderly.

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<sup>66</sup> Supplies include items that are expendable or consumed in day-to-day activities and replenished as needed.

## Financial Report

Each CE must complete the *Financial Report* in TX-UNPS by April 1 of each year, providing data that reflects all revenue and expenses—program and nonprogram—from the prior fiscal year. TDA uses the *Financial Report* for a variety of purposes, including, but not limited to, Administrative Reviews, Administrative Financial Reviews, and other financial audits. The financial data that CEs report to the Texas Education Agency (TEA) may be used to assist CEs in completing the form.

*[NOTE: TDA commonly reviews CE single audits and other financial reports collected by TEA. TDA also reviews all reports released by the Texas Legislative Budget Board (LBB). These reports and the Financial Report submitted in TX-UNPS are expected to have consistent financial information.]*

For the *Financial Report*, the CE must ensure that the reported data accurately reflects the CE's financial operations for the fiscal period reported. **Each year the report rolls the balance forward to the next year. If the CE has updated its financial report from the previous year and this adjustment results in a change in its financial balance, the CE must adjust the amount of the previous balance rolled forward.**

CEs should review the directions for the *Financial Report* before completing the form. This will help the CE to accurately record the required financial information in each field.

*[NOTE: The financial data reported in each field is determined by regulatory specifications and may not reflect data categories typically used in standard accounting practices.]*

The following information will assist the CE in completing the form; however, more detailed directions are provided in TX-UNPS, Application screen, Download Forms page.

- **Access to the Form**—To access the form, Contracting Entities (CEs) must click on the Applications tab in TX-UNPS and, then, click on *Financial Report*. If a CE clicks on the link before the form opens on March 1, the CE will see a *not available* message.
- **Item 1, Opening Balance**—The CE reports the financial data that corresponds to the first day of the most recent fiscal year. This will likely align with the financial data used in the most recent financial audit. The system automatically rolls the prior year's opening balance number forward—positive or negative, but the field is editable if the CE was found to have submitted incorrect data in the previous year's report.<sup>67</sup>

*[NOTE: A negative value indicates that the CE is not compliant with financial requirements as the CE is not allowed to roll a negative balance forward from one year to the next. The CE must clear the negative balance with funds from a non-SNP source.]*

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<sup>67</sup> TDA staff review all submitted forms for anomalies and discrepancies each year in addition to conducting financial audits and Administrative reviews as appropriate. When inaccurate data is found, TDA will notify the CE.

- **Distinct Information in Each Field**—Each type of income and revenue field should contain distinct information, that is, if a type of revenue or expenditure is included in one field, it should not be included in another reporting field.

*For Example: The program revenue field will include payments for paid meals, but it will not include the federal and state reimbursements. Federal and state reimbursements are reported in another field.*

- **Auto-Populating Fields**—For those fields that require a number to be recorded that is a sum or percentage based on numbers recorded in other fields, the system will automatically calculate the amounts and populate the field after the data is entered and the form is saved. The formulas are provided, so CE will know what is included in the automatic calculations. Even though the message says *submitted* on exit—the data is still editable until the form is closed for the year.
- **What to Include**—This form should cover all monetary revenue and expenses for the Child Nutrition Programs (CNPs). This would include all relevant CNP revenue and expenses, including the summer feeding program and Child and Adult Care Food Program (CACFP), catering, a la carte, adult meals, concessions, etc. This report must include all monetary revenues and expenses attributed to and processed through the CNP account(s). This report does not include non-monetary revenue and expenses such as the value of the USDA Foods received during the prior fiscal year.
- **Who Should Report**—All CEs operating the National School Lunch Program (NSLP), School Breakfast Program (SBP), or the Special Milk Program (SMP) should complete the report. However, CEs must report income and costs for all CNPs, not just the NSLP, SBP, or SMP programs. New CEs that do not have a prior fiscal year for NSLP, SBP, or SMP programs are not required to complete the *Financial Report* the first year.

## TDA Forms

TDA provides template forms at [www.squaremeals.org](http://www.squaremeals.org) that may be useful to CEs in managing program finances and accounting efforts. CEs are not required to use the forms provided by TDA for their financial records, unless specified, but TDA strongly recommends that CEs do so. In cases where CEs develop their own versions of forms or records, CEs are responsible to make sure that all required information and elements included in TDA forms are collected in the CE's forms or records.

The following TDA forms will assist CEs in collecting the information required to determine whether the CE is in compliance with accounting and financial requirements:

- *Budget Tool* (available at [www.squaremeals.org](http://www.squaremeals.org))
- *Capital Expenditure Request* (located in TX-UNPS)
- *Daily Record of Income—National School Lunch Program and School Breakfast Program Form* (available at [www.squaremeals.org](http://www.squaremeals.org))

- *Food Service Pro-rata Share of Exclusive Beverage Contract Form* (available at [www.squaremeals.org](http://www.squaremeals.org))
- *Income from Food Service Operations Form* (available at [www.squaremeals.org](http://www.squaremeals.org))
- *Physical Inventory of Food Purchased Form* (available at [www.squaremeals.org](http://www.squaremeals.org))
- *Plan for Reducing a Excessive Operating Fund Balance* (available at [www.squaremeals.org](http://www.squaremeals.org))
- *Program/Nonprogram Revenue and Cost Proportion Calculation Worksheet* (available at [www.squaremeals.org](http://www.squaremeals.org))
- *Record of Program Expenditures Form* (available at [www.squaremeals.org](http://www.squaremeals.org))

Each CE is required to complete the following form each year.

- *Financial Report* (located in TX-UNPS)

#### Information Box 3

##### Record 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.

## Records Retention

The CE is required to maintain an organized system of accounting and financial records retention that is accessible to appropriate CE staff members and federal or state reviewers. CEs have the option to maintain records on paper or electronically.

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, nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain. If audit findings have not been resolved, the records must be maintained as long as required for the resolution of the issues raised by the audit.

TDA may request financial documentation for both offsite and onsite processes for the Administrative Review, Procurement Review, Administrative Financial Review, and other audits as appropriate. The CE must be able to produce the following documentation in relation to its financial management of foodservice account funds:

### Employees

- Activity reports, and all related documentation, for all SNP employees

### Equipment/Property Disposal

- Records demonstrating how the CE disposed of equipment/property.

### Excessive Fund Balance (Net Cash Resources)

- Forms demonstrating the CE's efforts to address an excessive fund balance (net cash resources), if applicable

## Financial Management

- Records of financial transfers into and out of the SNP account
- Audit reports and related documentation
- Documentation related to corrective action taken as a result of an audit
- Records of any nonprogram funding sources used to cover any excess meal costs
- Documentation supporting the accuracy of internal and external financial reports

## Income and Costs

- Daily and cumulative monthly records of income received for meal service including reduced-price and paid meals and milk, a la carte, and adult meals served
- Daily and cumulative monthly records for cost and income from all sources, federal and non-federal with the ability to report income and cost by program
- Daily and cumulative monthly records for program and nonprogram expenses and revenue
- Invoices, payment stubs, and any record documenting expenses paid out of the SNP foodservice account

*[NOTE: Expenditures, no matter the method of payment, must be documented by itemized receipts, invoices, and/or cancelled checks. If an invoice is split between more than one program, there must be a method to document the charge to each program.]*

## Indirect Cost Rate

- Documentation indicating the approved indirect cost rate **which includes the agreement/plan/proposal indicating the approved indirect cost rate, indirect cost items included in the indirect cost pool, and financial documentation demonstrating consistent treatment of indirect costs.**

## Locally Purchased Food

When a CE purchases food items from local farm stands, farmer's markets, community supported agriculture programs, or farms a handwritten receipt is acceptable as long as the receipt includes the following information:

- Amount purchased
- Date of purchase
- Item cost
- Name of the vendor or farmer
- Total cost of the food items purchased

### **Pass-Through Entities**

When a CE *passes* funds to another entity (contractor, vendor, supplier, processor, organization, etc.) to act on behalf of or assist the CE in operating one of the child nutrition programs, the entity receiving the funds is expected to meet the terms and conditions established by the CE and operate in compliance with all program requirements, including all financial requirements. In order for the CE to ensure that all terms and conditions are met and that the entity acting on behalf of the CE is in compliance with financial requirements, the CE must have access to the following documentation maintained:

- All records and financial statements necessary to demonstrate compliance with all program regulations
- All records and financial statements that are necessary to evaluate the recipient's risk of noncompliance with federal statutes, regulations, and terms and conditions of the award.
- All records and financial statements that are necessary for audits
- All records that demonstrate that credits, discounts, and rebates and value of USDA Food have been accurately awarded to the CE

See the *Administrator's Reference Manual (ARM)*, Section 17, *Procurement* for additional information on methods to address these 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 accounting and financial requirements, including corrective action related to single audits conducted under Texas Education Agency requirements, another state or federal agency, a sponsoring organization, or the CE itself. Any lack of action to appropriately address a single audit finding that requires amended claims may result in fiscal action.

Additionally, TDA will assess compliance with the accounting and financial requirements based on the documentation that CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes.

See the *Record Retention* subsection in this section for more information on the kinds of documentation needed to demonstrate compliance.

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

CE's must report, in writing, 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 Penalties Associated With Mishandling of Funds**

The following statement from the NSLP regulations describes the penalties for the misuse or fraudulent use of program funds:

*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 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 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 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.

## Termination of the Permanent Agreement for Noncompliance with Audit Requirements

TDA may terminate the Permanent Agreement effective the first day of the month following the month in which the audit was due for any of the following reasons:

1. TDA does not receive the audit by the specified due date.
2. The CE submits an audit that does not meet audit requirements as defined in USDA regulations.
3. The CE requests but is not granted an extension of the audit due date and does not submit an acceptable audit as required.
4. The CE requests and is granted an extension of the due date but fails to submit an acceptable audit by the extended due date.

### Unacceptable Audit Notification

TDA will notify the CE in writing that the audit is unacceptable. The CE must submit an acceptable audit within 30 calendar days of the date of the notice.

### Extenuating Circumstances

If TDA determines that extenuating circumstances resulted in the CE's inability to submit an acceptable audit, TDA may conduct an additional audit or have an additional audit conducted through a third party contract. The CE must pay all costs associated with such an audit. The CE does not have the right to appeal this decision.

### Unacceptable CE Response to Audit Findings

As described in the *CE Response to Audit Findings—Corrective Action Plan* subsection in this section, if the audit findings indicate that the CE has submitted claims for reimbursement that are incorrect, the CE must amend the impacted claims<sup>68</sup> and take corrective action to prevent further violations. If the CE does not amend its claims and/or take appropriate corrective action, TDA may take fiscal action for any violations found during an audit.

Once the CE's Permanent Agreement has been terminated for failure to comply with the audit requirement, the CE must provide an acceptable audit for any outstanding audit year(s) and comply with audit requirement to be eligible to administer the program in the future.

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<sup>68</sup> When an audit finding results in the need for an upward or downward claim adjustment, the 60-calendar day claim rule is suspended. However, the CE must contact TDA before attempting to adjust claims. See *Administrator's Reference Manual (ARM), Section 7, Counting and Claiming* for additional information on this topic.

## **Section 17**

# **Procurement**

# Procurement

## Section 17 , Procurement Update Guide

December 17, 2018 Updated *Section 17, Procurement* to incorporate a new micro-purchase threshold.

June 25, 2018 Updated *Section 17, Procurement* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:

- *USDA Memo SP 04-2018, Market Basket Analysis When Procuring Program Goods and Modifying Contracted-For Product Lists* (January 17, 2018)
- *USDA Memo SP 38-2017, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program* (June 30, 2017)

Clarified information on the following topics:

- Aggregate
- Buy American
- Conflicts with EDGAR
- Definitions related to market basket purchasing
- Developing solicitations
- Market basket purchasing
- Noncompetitive method
- Reverse auction
- Sole source
- Written procurement procedures

April 4, 2017 Updated *Section 17, Procurement* to provide new guidance on the Buy America provision.

March 13, 2017 Updated *Section 17, Procurement* to remove detailed guidance on consultants, food service management companies (FSMC), and vended meals; this guidance has been moved to *Administrator's Reference Manual, Section 22, Food Service Contracts*. Incorporated the following United States Department of Agriculture (USDA) memo and guidance:

- *USDA Memo SP 05-2017, Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third-Party Services* (October 19, 2016)

Clarified information on the following topics:

- Additional resources
- Agent contracts
- Aggregate
- Brand name products
- Buy American
- Consultant contracts
- Cooperative purchasing
- Cost plus percentage of cost pricing structures
- Equipment technical requirements
- New terms related to cooperative purchasing: agent, operator, operator-only cooperative, third party cooperative

	<ul style="list-style-type: none"> <li>– Noncompetitive method</li> <li>– Pricing</li> <li>– Vendor list</li> </ul>
November 29, 2016	Updated to address typographical errors
October 26, 2016	Updated <i>Section 17, Procurement</i> to provide clarification on the following topic: <ul style="list-style-type: none"> <li>– Micro-purchase</li> </ul>
October 21, 2016	Updated <i>Section 17, Procurement</i> to incorporate the following United States Department of Agriculture (USDA) memo and guidance: <ul style="list-style-type: none"> <li>– <i>USDA Memo SP 35-2016, Bonding Requirements for Food Service Management Companies and Other Subcontractors</i> (May 5, 2016)</li> <li>– <i>USDA Memo SP 12-2016, Guidance on Competitive Procurement Standards for Program Operators</i> (November 13, 2015)</li> </ul> <p>Clarified information on the following topics:</p> <ul style="list-style-type: none"> <li>– Additional purchases (piggybacking)</li> <li>– Advertising requirement</li> <li>– Applicability of the <i>Education Department General Administration Regulations (EDGAR)</i> and other Texas Education Agency regulations</li> <li>– Awarding the contract</li> <li>– Bonding requirements and bid guarantees</li> <li>– Buy American Provision</li> <li>– Code of conduct, ethical standards, and conflict of interest</li> <li>– Consultant contracts</li> <li>– Contract management</li> <li>– Cooperative membership</li> <li>– Cooperative purchasing</li> <li>– Credits, rebates, and discounts</li> <li>– Difference between consultant and food service management contracts</li> <li>– Full and open competition</li> <li>– Micro-purchase</li> <li>– Noncompetitive procurement method, including sole source</li> <li>– Offers received after the due date</li> <li>– Opening offers prior to the due date</li> <li>– Other regulatory contract requirements</li> <li>– Preparation of solicitation</li> <li>– Procuring fresh fruit and vegetables</li> <li>– Protests</li> <li>– Public advertising</li> <li>– Purchase catalog</li> <li>– Responsive offers</li> <li>– Solicitation, purchase catalog, shared purchasing, taste testing samples</li> <li>– Total costs</li> <li>– Vendor list for produce</li> <li>– Written procurement procedures</li> </ul>

- February 10, 2016 Updated *Section 17, Procurement* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:
- *USDA Memo SP 24-2016, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program* (February 3, 2016)
- Clarified information on the following topics:
- Buy American Provision
- January 5, 2016 Updated *Section 17, Procurement* to incorporate the following United States Department of Agriculture (USDA) memos and guidance:
- *USDA Memo SP 03-2016, Procurement Standards and Resource Management Requirements Related to Franchise Agreements* (November 6, 2015)
  - *USDA Memo SP 02-2016, Questions and Answers on the Transition to and Implementation of 2 CFR Part 200* (October 30, 2015)
  - *Procuring Local Foods for Child Nutrition Programs* (released by USDA September 8, 2015)
  - *Updated Title 2 Code of Federal Regulations (CFR), Part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (August 10, 2015 and September 10, 2015)
  - *USDA Memo 30-2015, Office of Management and Budget Super-Circular-2 CFR 200* (March 18, 2015)
  - *USDA Memo SP 09-2015, Written Codes of Conduct and Performance of Employees Engaged in Award and Administration of Contracts* (November 21, 2014)
  - *USDA Memo SP 23-2013, Guidance Reaffirming the Requirement that State Agencies and School Food Authorities Periodically Review Food Service Management Company Cost Reimbursable Contracts and Contracts Associated with USDA Foods* (February 12, 2013)
  - *USDA Memo SP 03-2013, Procurement Geographic Preference Q&A's - Part II*, October 9, 2012)
  - *USDA Memo SP 01-2103, Federal Small Purchase Threshold Adjustment* (October 2, 2012)
  - *USDA Memo SP 35-2012, Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.* (June 12, 2012)
  - *USDA Memo SP 19-2012, Soliciting Bids from Commercial Distributors for End Products* (February 24, 2012)
  - *USDA Memo SP 17-2012, Procurement Questions and Answers to Assist in the Implementation of the final rule titled Nutrition Standards in the National School Lunch and School Breakfast Program* (February 23, 2012)
  - *USDA Memo SP 14-2012, Procurement Questions Relevant to the Buy American Provision* (February 13, 2012)
- Clarified information on the following topics:
- Additional resources
  - Compliance
  - Contracts
  - Managing contracts

- Records Retention
- Solicitations
- Types of procurement methods
- Written procurement procedures

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## 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 site name and ID if applicable) in all communication or documentation.

General Contact Information	
<i>Physical Address:</i>	1700 N. Congress, 11th Floor, Austin, TX 78701
<i>Mailing Address:</i>	PO Box 12847, Austin, TX 78711-2847
<i>Phone:</i>	877-TEXMEAL, (877) 839 -6325
<i>Fax:</i>	(888) 203-6593
<i>Email Contact:</i>	<a href="mailto:squaremeals@TexasAgriculture.gov">squaremeals@TexasAgriculture.gov</a>
<i>Website:</i>	<a href="http://www.squaremeals.org">www.squaremeals.org</a>
Email Contact for Issues Related to Applications	
<i>Child &amp; Adult Care Food Program:</i>	<a href="mailto:CACFP.BOps@TexasAgriculture.gov">CACFP.BOps@TexasAgriculture.gov</a>
<i>National School Lunch Program, School Breakfast Program, &amp; Special Milk Program:</i>	<a href="mailto:NSLP-SBP.BOps@TexasAgriculture.gov">NSLP-SBP.BOps@TexasAgriculture.gov</a>
<i>Seamless Summer Option:</i>	<a href="mailto:SSO.BOps@TexasAgriculture.gov">SSO.BOps@TexasAgriculture.gov</a>
<i>Summer Food Service Program:</i>	<a href="mailto:SFSP.BOps@TexasAgriculture.gov">SFSP.BOps@TexasAgriculture.gov</a>
Email Contact for Issues Related to Program Operation	
<i>Capital Expenditures:</i>	<a href="mailto:NSLP-SBP.BOps@TexasAgriculture.gov">NSLP-SBP.BOps@TexasAgriculture.gov</a>
<i>Commodity Operations:</i>	<a href="mailto:CommodityOperations@TexasAgriculture.gov">CommodityOperations@TexasAgriculture.gov</a>
<i>Community Operations (Child &amp; Adult Care Food Program &amp; Summer Food Service Program):</i>	<a href="mailto:Commuinty.Ops@TexasAgriculture.gov">Commuinty.Ops@TexasAgriculture.gov</a>
<i>Local Products:</i>	<a href="mailto:LocalProducts.SquareMeals@TexasAgriculture.gov">LocalProducts.SquareMeals@TexasAgriculture.gov</a>
<i>Procurement, Including Sole Source:</i>	<a href="mailto:CE.ProcurementReviews.BOps@TexasAgriculture.gov">CE.ProcurementReviews.BOps@TexasAgriculture.gov</a>
<i>School Operations (National School Lunch Program, School Breakfast Program, &amp; Special Milk Program):</i>	<a href="mailto:School.Operations@TexasAgriculture.gov">School.Operations@TexasAgriculture.gov</a>
<i>TX-UNPS Direct Certification Direct Verification System:</i>	<a href="mailto:DirectCertification@TexasAgriculture.gov">DirectCertification@TexasAgriculture.gov</a>
Email Contact for CE Flexibility Options	
<i>Breakfast Waiver:</i>	<a href="mailto:SNPWaivers@TexasAgriculture.gov">SNPWaivers@TexasAgriculture.gov</a>
<i>Excessive Balance Plan:</i>	<a href="mailto:School.Operations@TexasAgriculture.gov">School.Operations@TexasAgriculture.gov</a>
<i>Gender Exception:</i>	<a href="mailto:SNPWaivers@TexasAgriculture.gov">SNPWaivers@TexasAgriculture.gov</a>
<i>Grains Exemption:</i>	<a href="mailto:Nutrition@TexasAgriculture.gov">Nutrition@TexasAgriculture.gov</a>
<i>Milk Substitute Notification:</i>	<a href="mailto:Nutrition@TexasAgriculture.gov">Nutrition@TexasAgriculture.gov</a>
<i>RCCI Age/Grade Group Meal Pattern Flexibility:</i>	<a href="mailto:School.Operations@TexasAgriculture.gov">School.Operations@TexasAgriculture.gov</a>
<i>Seamless Summer Operation (SSO) Age/Grade Flexibility:</i>	<a href="mailto:SNPWaivers@TexasAgriculture.gov">SNPWaivers@TexasAgriculture.gov</a>
<i>Child Nutrition Program Requirement Waiver:</i>	<a href="mailto:SNPwaivers@TexasAgriculture.gov">SNPwaivers@TexasAgriculture.gov</a>
<i>Summer Mandate:</i>	<a href="mailto:SNPWaivers@TexasAgriculture.gov">SNPWaivers@TexasAgriculture.gov</a>

9/25/18

# Procurement

The procurement process is designed to assist contracting entities (CEs) in establishing procedures that ensure full and open competition (also called free and open competition) for the purchase of products and/or services.

*Procurement is the act of obtaining of goods or services in exchange for money or value.<sup>1</sup>*

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 assist CEs in developing an effective and compliant procurement process.

In addition to the guidance in this section, *Administrator's Reference Manual (ARM), Section 16, Confidentiality and Program Integrity* provides additional guidance that applies to procurement.

## 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/](http://www.comptroller.texas.gov/)

Resources include the following:

- *Model Purchasing Manual for Texas Cities and Counties 2010* which includes 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](http://www.texasahead.org/lga/finances/purchasing/96-449_Model_Purchasing_Manual_11_10.pdf)
- *State of Texas Contract Management Guide* which provides guidance and recommendations on improving existing contract management processes and practices. Available at [www.comptroller.texas.gov/purchasing/publications/contract-management-guide.php](http://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 3, Purchasing, for local education agencies and charter schools. Available at

[www.tea.texas.gov/Finance\\_and\\_Grants/Financial\\_Accountability/Financial\\_Accountability\\_System\\_Resource\\_Guide/](http://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](http://www.fns.usda.gov/es/node/73141)

<sup>1</sup> 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.

## Consultants, Food Service Management Companies, and Vended Meals

The guidance in this section applies to contracts for consultants, food service management companies (FSMCs), and vended meals. However, there is also additional guidance specific to these types of contracts located in *Administrator's Reference Manual, Section 22, Food Service Contracts*.

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

The updates to *Section 17, Procurement* 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 (CNP), there are federal, state, and local regulations that govern the actions of the CE. If other applicable federal, state, or local regulation does not conflict with USDA regulations, the CE must follow the other federal, state, or local regulations in addition to the USDA regulation. 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 Administration Regulations (EDGAR)

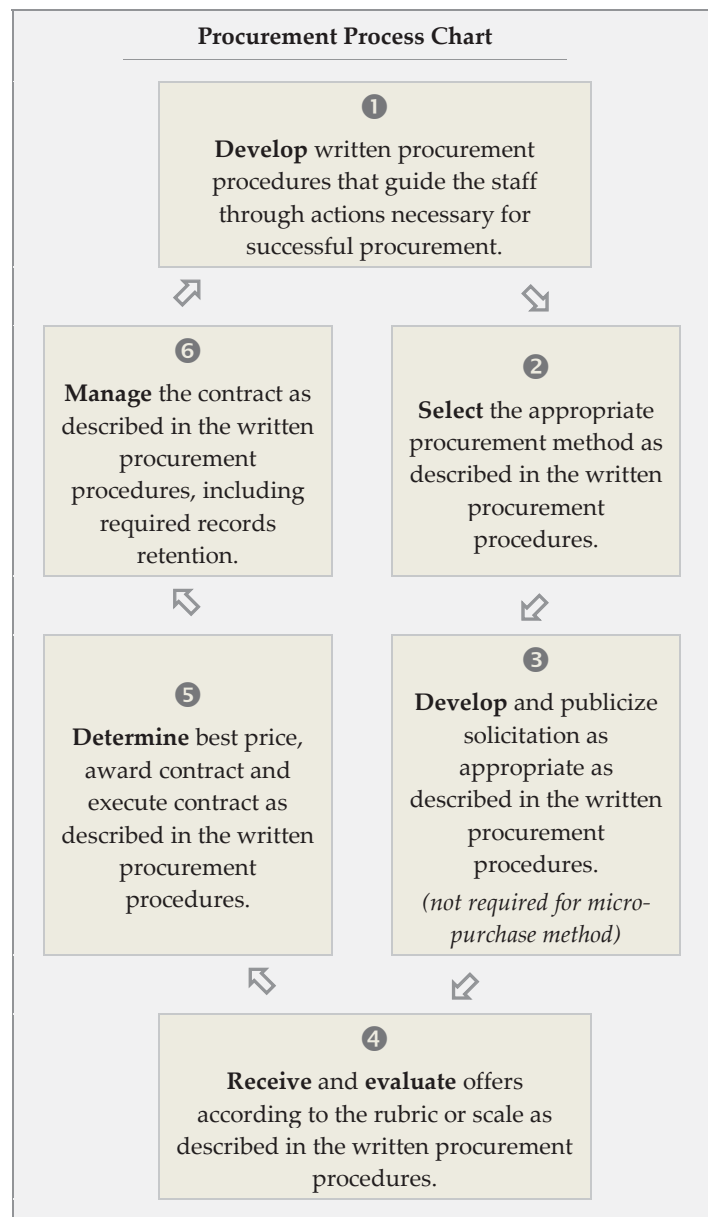
CEs receiving funds through the United States Department of Education are required to follow the regulations described in the *Education Department General Administration Regulations (EDGAR)*. Child Nutrition Programs (CNP) are required to follow USDA regulations for financial management, including procurement. 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).

## Effective Procurement Systems

The procurement process follows a set of prescribed steps:

1. **Develop** written procurement procedures that guide the staff through actions necessary for successful procurement.
2. **Select** the appropriate procurement method as described in the written procurement procedures (*not required for micro-purchase method*).
1. **Develop** and **publicize** solicitation as appropriate as described in the written procurement procedures.
2. **Receive** and evaluate offers according to the rubric or scale as described in the written procurement procedures.
3. **Determine** best price, award contract and execute contract as described in the written procurement procedures.
4. **Manage** the contract as described in the written procurement procedures, including required records retention.

The *Procurement Process Chart* illustrates the flow of the procurement process.



## 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.*

This type of financial management system provides safeguards that improve the stewardship of federal money and reduce fraud and improper payments by the use of internal controls. In procurement,

*Internal controls (1) define actions related to the procurement process, (2) establish standards of ethical conduct, and (3) provide full and open competition.<sup>2</sup>*

Any cost paid to a contractor as a result of improper procurement methods, whether paid by the CE or a third party, is an unallowable expense. Unallowable expenses must not be paid by the school nutrition program.

**Other Entities (Third-Party Entities).** Any agency, organization, group, business, food service management company, food processor, contractor, distributor, vendor, or other entity acting on behalf<sup>3</sup> of the CE for any of the SNP programs are also required to follow the federal procurement guidance described in this section for any procurement actions they take on behalf of the CE.

All third-party entities must provide adequate documentation<sup>4</sup> to a CE so that the CE can determine if the procurement regulations have been implemented appropriately, including, but not limited to, documentation related to credits, discounts, and rebates as well as USDA Foods values.

*Administrator's Reference Manual (ARM), Section 16, Confidentiality and Program Integrity* provides additional guidance on this topic.

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<sup>2</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

<sup>3</sup> See the *Definitions* subsection in this section for additional information on this topic.

<sup>4</sup> See the *Records Retention* subsection in this section for additional information on documentation.

## Definitions for This Section

For this section, the following definitions will be useful:

*[NOTE: The definitions provided in this section are specific to financial transactions that occur for school nutrition programs.]*

<i>Acting on Behalf of CE</i>	Entity or person who has been given the responsibility to take action for the CE.
<i>Agent</i>	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
<i>Aggregate Purchase Amount</i>	Total amount of a single invoice for a single purchase of or transaction for product(s) and/or service(s). Separate aggregate purchase(s) may occur weekly, monthly, or annually. The total aggregate cost may be broken into multiple delivery payments which are paid as each product and/or service is delivered or when specified expectations are met.
<i>Approved Supplier List</i>	A 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.
<i>Arms-Length Transaction</i>	<p>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> <p><i>Less than Arms-Length Transaction</i></p> <p><i>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.</i></p>
<i>Bid Guarantee</i>	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.
<i>Bond</i>	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.
<i>Brokers</i>	Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.
<i>Buy American</i>	<p>Requirement for schools to purchase, to the maximum extent practicable, domestic commodities and products.</p> <p><i>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.</i></p>

<i>Code of Conduct</i>	<p>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:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> </ol>
<i>Conflict of Interest</i>	Any action that allows a person to benefit at the expense of the public interest or the expense of their employer.
<i>Contract</i>	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.
<i>Cooperative Purchasing</i>	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.
<i>Cost Index</i>	Tool that is designed to show the impact of an economic measure on the price of purchasing a specific type of item.
<i>Cost Plus Percentage Cost</i>	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 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).
<i>Cost Reimbursable Contract</i>	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. 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.
<i>Debarment</i>	Action taken by a debarring official to exclude a person from participating in covered transactions. <sup>5</sup> A person so excluded is <i>debarred</i> , that is, unable to participate.
<i>Distributor</i>	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.
<i>Drop Delivery</i>	Delivery to one location within the CE, such as a central warehouse.
<i>Economies of Scale</i>	Purchase of large quantities of a product and/or service in order to obtain a better price.

<sup>5</sup> Covered transactions in this section refer to transactions related to child nutrition programs.

<i>Escalator/De-escalator Clause or Market-based Pricing</i>	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
<i>Ethics</i>	Moral standards individuals use to guide decisions in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
<i>Firm Fixed-price Contract (Also Called Firm Price Contract)</i>	Contracts that provide products and/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.
<i>Fixed-Price</i>	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.
<i>Fixed Price (Fee)</i>	Agreed upon amount of money that is fixed at the inception of the contract.
<i>Food Service Management Company (FSMC)</i>	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. <sup>6</sup>
<i>Forecasting</i>	Process of analyzing current and historical data to determine future procurement trends. 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.
<i>Full and Open Competition</i>	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 <i>free and open competition</i> .
<i>Grade Standards</i>	USDA quality standards based on measurable attributes that describe the value and utility of the products.
<i>Grantees</i>	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.
<i>Incentives</i>	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.

<sup>6</sup> 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.

<i>Internal Controls</i>	Processes or procedures established by the CE that (1) define actions related to the procurement process, (2) establish standards of ethical conduct, and (3) provide full and open competition.
<i>Invitation for Bid (IFB)</i>	Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors.
<i>Just-in Time (JIT)</i>	Food and supplies kept in quantities an entity anticipates will meet its immediate needs which results in the entity maintaining a low inventory level.
<i>Lead Time</i>	Amount of time necessary for a distributor to prepare and deliver products and/or services to the CE.
<i>Local Product</i>	Unprocessed locally grown or raised agricultural products that retain their inherent character.
<i>Managing the Contract</i>	Procedures the CE has in place to ensure that contractors perform in accordance with the terms, conditions, and specifications and/or technical requirements of their contracts or purchase orders.
<i>Market Basket</i>	Solicitation strategy that allows a contracting entity (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.
<i>Market Basket, Total Cost Analysis and Scoring</i>	Analysis and scoring evaluation based on the aggregate total cost or by line item total.
<i>Market Basket, Simplified Total Cost Analysis and Scoring</i>	Analysis and scoring evaluation based on a representative sample of all products.
<i>Material Change</i>	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.
<i>Micro-purchase Method</i>	Single purchase or transaction with an aggregate total cost that does not exceed <b>\$10,000<sup>7</sup></b> whether that purchase occurs weekly, monthly, or annually.
<i>Noncompetitive Method</i>	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.
<i>Open Award</i>	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.
<i>Operator</i>	Entity that operates a Child Nutrition Program.

<sup>7</sup> Effective January 1, 2019

<i>Operator-Only Cooperative</i>	Any type of agreement that is formed solely among CNP operators including regional education service center (ESC) cooperatives.
<i>Pass Through Entity</i>	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 for a federally funded program.
<i>Payment Bond</i>	Bond which covers the cost of materials and works for construction contracts.
<i>Performance Bond</i>	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.
<i>Procurement</i>	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.]
<i>Procurement Standards</i>	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 financial interest.
<i>Program Integrity</i>	An organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds.
<i>Proprietary Products</i>	Manufactured products ordered specifically for a particular program or are unique to a manufacturer.
<i>Reasonable Cost</i>	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.
<i>Regulatory Authority</i>	Oversight authority dictated by legislative act or regulation.
<i>Request for Proposals (RFP)</i>	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price or cost reimbursable type contract.
<i>Responsible</i>	Capable of providing the product(s) and/or service(s) as described in the solicitation.
<i>Responsive</i>	Offer that addresses terms and conditions of the solicitation including the specifications and/or technical requirements for product(s) and/or service(s).
<i>Service Fee</i>	Fee charged for the performance of a specific service.
<i>Simplified Acquisition Threshold (Also Called Small Purchase Threshold)</i>	An amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be used.
<i>Sole Source Method</i>	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.

<i>Solicitation</i>	Process of notifying prospective or qualified offerors about the specifications or technical requirements for 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.
<i>Subgrantees</i>	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
<i>Supplier (Sometimes Called Vendor)</i>	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.
<i>Specifications and Technical Requirements</i>	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.
<i>Third Party</i>	Entity that is contracted to act on behalf of another entity.
<i>Third Party Cooperative</i>	<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><i>Non-Child Nutrition Program State Agency Procurement Agency Agreements</i>  <i>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.</i></p> <p><i>Interagency Agreements</i>  <i>Public, private, and nonprofit entities formed for the purpose of procuring goods and services</i></p> <p><i>Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors (Collectively Referred to as GPOs)</i>  <i>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.</i></p>
<i>Transaction</i>	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.
<i>Unallowable Cost or Expense</i>	Cost or expense which cannot be paid using school nutrition program funds. This includes costs and expenses incurred by the CE as well as any third party acting on behalf of the CE. <i>Disallowed</i> is sometimes used in place of <i>unallowable</i> .
<i>Value</i>	Something of monetary or material worth or something that has usefulness that can be exchanged for something of worth, merit, or importance.
<i>Velocity Report</i>	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.

<i>Vendor Participation Fees</i>	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.
<i>Written Procurement Procedures</i>	Procedures that define the critical steps in determining the method of procurement to be used, roles, and responsibilities of staff when procuring products and/or services, and methods for monitoring procured products and/or services. For this section, the term procedure is used to refer to processes, protocols, standards of behavior, expectations, or any other written method of describing actions staff are to take related to procurement. Written procurement procedures may include a procurement plan with timelines and tasks, or a procurement plan may be a separate document from the procedures.

## Written Procurement Procedures

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.

For this section, the term *procedure* is used to refer to processes, protocols, standards of behavior, expectations, or any other written method of describing actions staff are to take related to procurement.

CEs may have a set of overarching procedures at the CE level and more detailed procedures at the site level. Or they may have a single set of procedures that are applied at all levels. CEs may include a procurement plan or schedule with timelines and tasks by type of procurement, type of product, or type of service as a separate document or incorporate it into their written procedures.

These procedures are intended to guide staff as they take procurement actions and define the roles and responsibilities for all involved in procurement.

Procedures which define the CE's internal controls for procurement must achieve the following:

### *Internal Controls Must<sup>8</sup>*

- define actions related to the procurement process,
- establish standards of ethical conduct, and
- provide full and open competition.

To ensure that there is full and open competition, CEs should consider the following questions as they assess their procurement procedures:

- Do the CE's procurement procedures promote competition among offerors?
- Does the solicitation procedure promote full and open competition?
- Does the procurement procedure create a competitive environment?

<sup>8</sup> See *Administrator's Reference Manual (ARM), Section 16, Confidentiality and Program Integrity* for additional information on this topic.

## Written Procurement Procedures, General Standards

CEs must have written procedures for the selection, award, and administration of procurement transactions that include an explanation of how the CE will address the following issues:

### General Elements

- Full and open competition
- Methods for the identification of possible suppliers for products and/or services procured with the small purchase method
- Equitable<sup>9</sup> distribution of micro-purchases among all suppliers
- When and how to give preference to local suppliers, including a definition of *local*<sup>10</sup>

*[NOTE: A definition for local supplier may be different for different types of products and/or services because of the availability to potential suppliers. If the definition for local is too restrictive, it may limit full and open competition.]*

- Strategies for forecasting or predicting future products and/or services that will need to be procured
- Timeline for procurement actions  
*USDA recommends that at least 45 days be allowed for invitation for bid procurements and 60 days for request for proposal procurements.*<sup>11</sup>
- Thresholds or characteristics that mandate a specific type of procurement method: micro-purchase, small purchase, invitations for bid (IFB, also called sealed bids), or competitive requests for proposal (RFP)
- Utilization of a pricing structure that does not include cost plus percentage of cost. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).

### Economy and Efficiency

- Strategies to increase greater economy and efficiency in purchasing.

#### *Unnecessary or Duplicative Products and/or Services*

Consideration of when consolidating or breaking procurements to more than one contract lead to a more economical purchase.

- Effective forecasting strategies will assist the CE in developing accurate solicitations.
- Where appropriate, the CE will conduct an analysis of lease versus purchase alternatives or any other appropriate

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<sup>9</sup> In this case *equitable* means *fair* or *balanced* distribution.

<sup>10</sup> See the *Local Preference* subsection of this section for additional information using local preference.

<sup>11</sup> See the *Procurement Purchasing Methods* subsection in this section for additional information on these procurement methods.

analysis to determine the most economical approach to procuring products and/or services.

#### *Intergovernmental Agreements or Inter-Entity Agreements*

To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, the CE is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

#### *Excess and Surplus Property*

CEs are encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. This includes, but is not limited to, USDA Foods.

### **Forecasting**

- Strategies and processes for evaluating a variety of factors in order to predict quantities of products and/or services to be procured.

Proper forecasting is integral to full and open competition. Effective forecasting helps to ensure that the CE is able to develop a solicitation that includes accurate specifications and/or technical requirements. When forecasting is done well, there is less likelihood that a material change<sup>12</sup> will occur.

The following factors should be considered in forecasting:

- Student enrollment, current and projected
- Student average participation, current and projected<sup>13</sup>
- Future campus realignment including new schools
- Available and future product storage
- Velocity reports (amount ordered/used or served in the past)
- Planned changes specific to products and/or services (menu offerings, adding operation of a different school nutrition program or child nutrition program<sup>14</sup> at a site or sites, results from taste and acceptability activities)

When a CE is unsure about the impact of any of these factors on the quantity to procure, the CE may opt for a shorter period of time for the contract. The shorter period of time gives the CE greater control of

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<sup>12</sup> See *Material Change* in the *Contract* subsection in this section for additional information on this topic.

<sup>13</sup> The monthly *Daily Record/Accuclaim* forms for each site provide this information. This form is available at [www.squaremeals.org](http://www.squaremeals.org).

<sup>14</sup> Other child nutrition programs include Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).

the inventory and allows the CE to easily make adjustments.

While a CE may include flexibility in the solicitation and contract that indicates an estimated range of quantities, the CE will receive more competitive pricing if its estimates are more precise. Moreover, if the adjustments over time result in a material change to the contract, the CE must rebid the contract.<sup>15</sup>

## Managing the Procurement Process

### *Contract Award*

- Method or strategy for awarding contracts including staff positions responsible for approval of contract awards based on type of procurement method.

### *Local Preference*

- Manner in which local preference will be applied to solicitations and definition or definitions the SNP will use for local preference.<sup>16</sup>

### *Noncompetitive Processes, Including Sole Source*

- Method for obtaining required information when a noncompetitive procurement can be conducted including a sole source purchase.<sup>17</sup>

### *Monitoring*

- Process for staff assigned to ensure that contractors perform in accordance with the terms, conditions, specifications, and technical requirements of the contracts or purchase orders.
- Process for staff responsible for the settlement of all contractual and administrative issues arising out of procurements.

*These issues include, but are not limited to, source evaluation, protests, disputes, and claims.*

### *Protests*

- Process for assigned staff to respond to and resolve all bid protests.<sup>18</sup>

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<sup>15</sup> See the *Material Change* subtopic in the *Contract* subsection in this section for additional information on this topic. An unallowable cost or expense cannot be paid using school nutrition program funds.

<sup>16</sup> See the *Local Preference* topic in the *Other State and Federal Regulations* for additional information on using local preference. See also USDA's *Procuring Local Foods for Child Nutrition Programs* available at [www.fns.usda.gov/farmtoschool/procuring-local-foods](http://www.fns.usda.gov/farmtoschool/procuring-local-foods).

<sup>17</sup> See the *Sole Source Method* subtopic in the *Procurement Purchasing Methods* subsection in this section for additional information.

<sup>18</sup> See the *Protests* subsection in this section for additional information on this topic.

### *Purchasing System*

- Schedule for purchasing so that the CE is able to better forecast future needs.
- Management tools and strategies that promote effective organizational systems and consistent procurement activities across school nutrition programs and other large ongoing projects.
- Strategy to identify all tasks in proper sequence and plan enough time to accomplish all tasks which includes established bid periods for the products and/or services to be purchased.
- Process to approve and make payments for awarded contracts including methods for ensuring that product and/or service invoices are received as prescribed by the contract.

### *Solicitation*

- Process for developing a solicitation that includes the development of specifications and/or technical requirements for the products and/or services to be purchased.<sup>19</sup>
- Method or strategy for advertising solicitations for contracts based on type of procurement.
- Method for determining the content for advertising solicitations for contracts based on type of procurement.
- Criteria for making an award including the method used to determine which offeror is the most responsible and responsive and provides the best price for the products and/or services for each type of procurement method.
  - *Responsible*: capable of providing products and/or services as described in the solicitation.
  - *Responsive*: pricing information specific to the products and/or services to be purchased as described in the solicitation.

### **Records Retention**

- Description of routine procedures and timelines for retaining required documentation that demonstrates the history of all procurement actions.<sup>20</sup>

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<sup>19</sup> See the *Solicitation* subsection in this section for additional information on this topic.

<sup>20</sup> See the *Records Retention* subsection in this section for additional information on this topic.

## Written Procurement Procedures, Ethical Standards (Code of Conduct)

CEs must have written procedures that include ethical standards or a code of conduct that govern the performance of employees, officers, and agents of the CE that are engaged in the selection, award, and administration of the contracts.

Written procurement procedures must address the following issues:

- Code of conduct for financial transactions for all employees
- Disclosure of all conflicts of interest
- Disclosure of all real or apparent conflicts of interest
- Certification regarding lobbying
- Debarment and suspension

*Administrator's Reference Manual (ARM), Section 16, Confidentiality and Program Integrity* includes detailed guidance on requirements related to these topics.

## Written Procurement Procedures, Full and Open Competition Standards

All procurement transactions must be conducted in a manner that provides full and open competition to all entities that choose to participate. Full and open competition means that everyone is on a *level playing field* and has the same opportunity to compete for the purchase of products and/or services. Full and open competition fosters decreased costs and increased quality of products and/or services.

There are two questions that are vital in determining if there has been full and open competition:

1. Is there an adequate number of possible offerors that are able to submit offers to the solicitation?
2. Were there an adequate number of offerors who submitted responses or offers to the solicitation?

### Barriers to Full and Open Competition

Situations considered to be restrictive of full and open competition include, but are not limited to, the following:

- Any arbitrary action in the procurement process
- Overly restrictive definition for local when applying local preference<sup>21</sup>
- Organizational conflicts of interest
- Placing unreasonable requirements on firms in order for them to qualify to do business
- Requiring unnecessary experience and excessive bonding<sup>22</sup>

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<sup>21</sup> See the *Local Preference* subsection in this section for more information on using local preference.

- Noncompetitive pricing practices between firms or between affiliated companies
- Noncompetitive awards to consultants that are on retainer contracts<sup>23</sup>
- Specifying only a brand name product instead of allowing an equal product to be offered<sup>24</sup>

## Written Procurement Procedures, Cost Analysis

The CE must define the methods it will use to perform a cost analysis to estimate the cost of products and/or services to pre-estimate the cost for both formal and informal procurement methods before preparing the solicitation, and who is responsible for these efforts as well as contract modifications. In addition to the estimated cost of products and/or services, the cost analysis determines which contract clauses and certifications are required in contracts.

In conducting a cost analysis, the CE will use the tools that are also used in forecasting<sup>25</sup> as well as any other available tools or strategies that may help the CE to develop the estimated cost of the products and/or services. The method and depth of the cost analysis is dependent on the complexity of the products and/or services to be purchased. Generally, the cost analysis for a formal procurement method is more in-depth than the cost analysis for an informal procurement method.

## Full and Open Competition

Full and open competition is achieved when potential offerors receive all information necessary to respond properly to a solicitation and offers are accurately evaluated for contract award. To this end, the CE must evaluate its procurement actions as they are implemented to ensure that there is full and open competition.

### Prior to Issuing the Solicitation

During the development of the solicitation, the CE must determine if the specifications, technical requirements, terms, and conditions in the solicitation will limit the number of possible offerors that are able to bid or respond to the solicitation to an inadequate number<sup>26</sup>—restrict full and open competition.

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<sup>22</sup> See the *Bonding Requirement* subtopic in the *Other State and Federal Regulations Related to Contracts* subsection in this section for additional information on this topic.

<sup>23</sup> A contract in which a contractor is paid an upfront fee for anticipated services and/or products.

<sup>24</sup> See the *Use of Brand Names* subsection in this section for additional information on the use of brand names in solicitations.

<sup>25</sup> See the *Forecasting* subtopic in the *Written Procurement Procedures* subsection in this section for additional information on this topic.

<sup>26</sup> Adequate number is based on the type of procurement method. See the *Procurement Purchasing Methods* subsection for information on how adequate number is defined for each type of procurement.

*Are there enough potential offerors that can meet the specifications, technical requirements, terms, and conditions as described in the solicitation to hold a competitive procurement process?*

- If there are not an adequate number of possible offerors to foster competition, the CE must modify the solicitation as necessary and reissue the solicitation.

*[NOTE: An inadequate number of offers does not automatically indicate that the CE should pursue a noncompetitive procurement method. A lack of offers is often caused by a poorly written solicitation or advertising that targets too small of a population base and not a lack of contractors or vendors capable of supplying the products and/or services to be procured. Therefore, the CE must provide notification that the CE is not awarding a contract, review its solicitation, make appropriate changes to the solicitation, and reissue the solicitation.]*

- If there is an adequate number of possible offerors, the CE should issue the solicitation and move to the next step in its procurement procedure.

#### **After Offers Are Received**

When all offers have been received, the CE must determine if the specifications, technical requirements, terms, and conditions as described in the solicitation have limited the number of offerors who were able to submit an offer: Was there an adequate number of offers? Was full and open competition restricted?

*Was there an adequate number of offerors that responded to the solicitation?*

- If there is not an adequate number of offers submitted, the CE must determine how to address the identified limitations in its solicitation and/or in its method for public advertising and reissue the solicitation.

*[NOTE: An inadequate number of offers do not automatically indicate that the CE should pursue the noncompetitive procurement method.<sup>27</sup> A lack of offers is often caused by a poorly written solicitation or advertising that targets too small of a population base and not a lack of contractors or vendors capable of supplying the products and/or services to be procured. Therefore, the CE must provide notification that the CE is not awarding a contract, review its solicitation, make appropriate changes to the solicitation, and reissue the solicitation.]*

- If there are an adequate number of offers submitted, the CE should move to the next step in its procurement procedure.

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<sup>27</sup> See the *Sole Source Method* subtopic in the *Procurement Purchasing Methods* subsection in this section for additional information on this topic.

## Procurement Purchasing Methods

CEs must use their written procurement procedure to guide them in selecting the appropriate procurement method, including the appropriate cost analysis method.<sup>28</sup> There are two types of procurement methods that CEs may use—formal and informal. The decision to use informal or formal is based on the total estimated cost of the purchase and whether it does or does not exceed the simplified acquisition threshold (small purchase threshold).<sup>29</sup>

### Before Selecting a Procurement Method

To identify the most appropriate procurement method, the CE must follow its written procurement procedures and retain all records related to the procurement. This includes, but is not limited to, conducting a cost analysis to determine the estimated cost for the products and/or services to be procured<sup>30</sup> and all cost comparison documentation.

In all cases, the goal of the procurement process is for the CE to make the most economic and efficient use of federal funds while offering full and open competition.<sup>31</sup> The choices the CE makes should be based on this objective.

Simplified Acquisition Threshold Chart (Based on Cost Analysis Estimated Amount of Purchase)	
Simplified Acquisition Threshold Purchase	<i>equal to or less (<math>\leq</math>) than threshold</i> <u>may</u> use an <u>informal or formal</u> procurement method.
	<i>greater than (<math>&gt;</math>) than threshold</i> <u>must</u> use a <u>formal</u> procurement method.

### Simplified Acquisition Threshold (Small Purchase Threshold)

The simplified acquisition threshold is the highest total cost that can be procured using the informal procurement method.

- If the purchase is *equal to or less* than the simplified acquisition threshold, the purchase may be made using an informal or formal method.
- If the purchase *exceeds* (greater than) the simplified acquisition threshold, the purchase must be made using the formal process.

[NOTE: A CE may use a formal method when a purchase is less than the simplified acquisition threshold in order to take advantage of economies of scale, i.e., purchase of larger quantities resulting in lower costs.]

<sup>28</sup> See the *Written Procurement Procedures* subsections in this section for additional information on this topic.

<sup>29</sup> In limited cases, a CE may be allowed to use a noncompetitive procurement method. See the *Noncompetitive Method* and *Sole Source Method* subtopics in the *Procurement Purchasing Methods* subsection in this section for additional information on this topic.

<sup>30</sup> See the *Cost Analysis* subtopic in the *Written Procurement Procedures* subsection in this section for additional information on this topic.

<sup>31</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

## Most Restrictive Simplified Acquisition Threshold

The CE must follow the most restrictive simplified acquisition threshold requirements that apply based on type of entity and the agency or organization that has regulatory authority (federal, state, or local) over the entity for all purchases. Each CE is responsible to ensure that it applies the correct simplified acquisition threshold based on its entity type and regulatory authority.

In Texas, most CEs operating NSLP and SBP will fall into one of three types of entities:

- ***Governmental, regulated by the Texas Education Agency (TEA)***—These CEs must use the simplified acquisition threshold established by TEA.

*As of October 12, 2015, the simplified acquisition threshold for public school districts and charter schools regulated by TEA is less than \$50,000. Less than \$50,000 means equal to or less than \$49,999.99.*

*CEs should verify that their simplified acquisition threshold amount has not changed since the date this section was released. CEs may also be subject to a lower simplified acquisition threshold based on local or other applicable state regulations.*

*TEA provides guidance on procurement and financial management at [www.tea.texas.gov/Finance\\_and\\_Grants/Financial\\_Accountability/Financial\\_Accountability\\_System\\_Resource\\_Guide/](http://www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/).*

- ***Governmental not regulated by TEA***—These CEs must use the simplified acquisition threshold established by or adopted by the governmental agency that has regulatory authority for the CE.

*As of October 12, 2015, the simplified acquisition threshold for Texas governmental agencies (unless the agency/regulatory authority establishes other regulations) is less than \$25,000. Less than \$25,000 means equal to or less than \$24,999.99.*

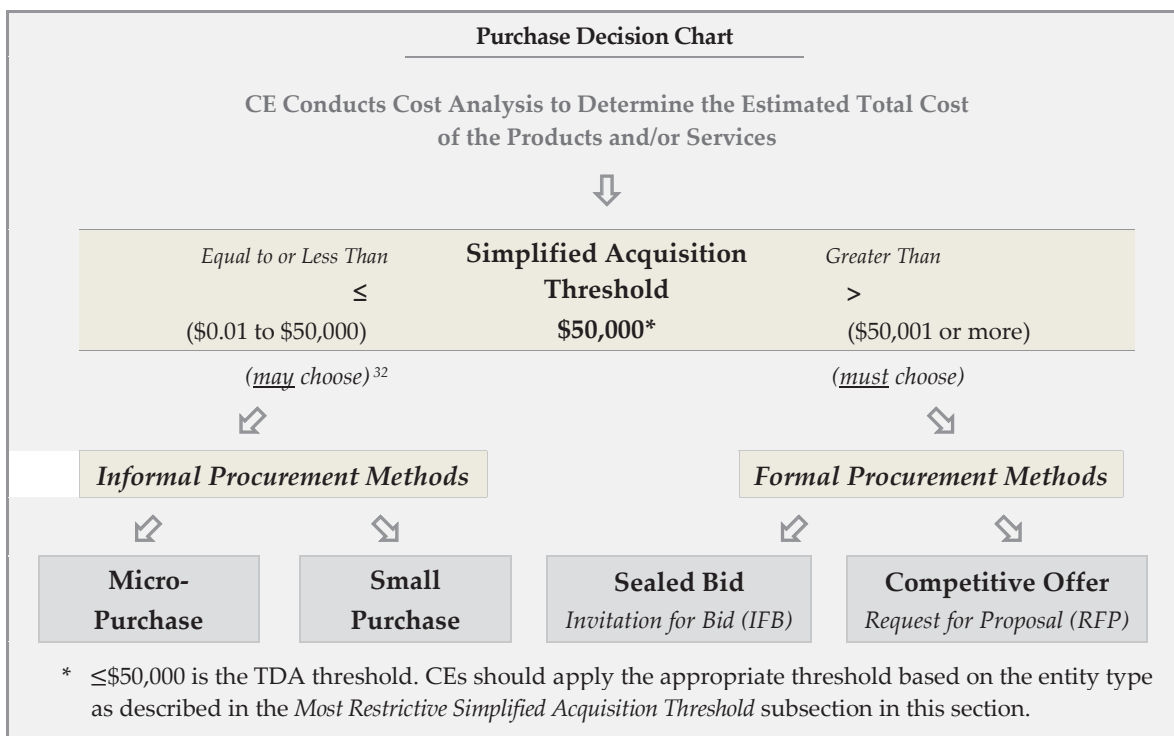
*CEs should verify their simplified acquisition has not changed since this date. CEs may be subject to a lower simplified acquisition threshold based on local or other applicable state regulations.*

*The Texas Comptroller of Public Accounts website provides additional information and resources on financial management for governmental agencies at [www.comptroller.texas.gov](http://www.comptroller.texas.gov).*

- ***Nongovernmental***—These CEs must use the simplified acquisition threshold established by TDA, less than or equal to \$50,000.

*CEs may be subject to a lower simplified acquisition threshold based on local or other applicable state regulations.*

The *Purchase Decision Chart* demonstrates how the CE makes a decision on which procurement method to use. If a CE has a different threshold that applies, that threshold amount should be substituted for the TDA threshold in the chart.



### Purchasing Through Auctions

If a CE chooses to make purchases through an auction, the CE must apply the procurement regulations to the purchase. CEs that make auction purchases typically use them for produce or other locally grown products. If the amount is under the simplified acquisition threshold, the CE may use the informal method. If the amount exceeds the simplified acquisition threshold, the CE must use the formal procurement method.

CEs may also make purchases through reverse auctions. Reverse auctions must adhere to all procurement requirements, including, but not limited to, procurement method, simplified acquisition threshold, solicitation, and award to the most responsive and responsible offer.

<sup>32</sup> CE may choose to use a formal procurement procedure for a total cost that is equal to or less than the simplified acquisition threshold in order to get a better price.

## Informal Procurement Methods

If the cost analysis results in a total cost that does not exceed the simplified acquisition threshold, there are two informal procurement methods a CE may use — micro-purchase or small purchase method.

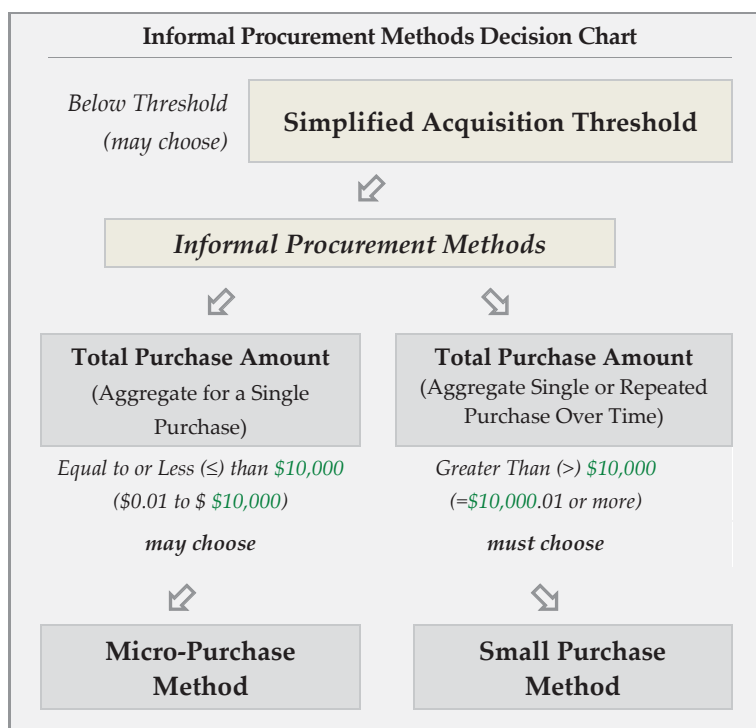
In the selection of the procurement method and actions related to the procurement, the CE must follow its written procurement procedure and retain all records related to the procurement. Any costs incurred as a result of improper procurement processes are unallowable costs to the school nutrition program.<sup>33</sup>

### Micro-Purchase Method

The micro-purchase method is intended to minimize the burden for purchases of very small amounts. A micro-purchase is a single purchase or transaction that has a total aggregate cost that is equal to or less than \$10,000<sup>34</sup> total aggregate cost may consist of one product and/or service or multiple products and/or services. Separate aggregate purchases may occur weekly, monthly, or annually.

*[NOTE: CEs may choose to divide the cost of a single aggregate purchase into several payments when an order is fulfilled in more than one delivery or a service contract spans several work days. In these cases, even though more than one payment is made, it is a single aggregate purchase.]*

However, the small purchase method may be the more appropriate procurement method even though the total aggregate amount for a single purchase qualifies for a micro-purchase. If the CE purchases the same products and/or services frequently, the cost savings from using the small purchase method instead of the micro-purchase method may be significant. In these cases, the CE must explore the benefits of using the informal small purchase method instead of a micro-purchase method.



<sup>33</sup> An unallowable cost or expense cannot be paid using school nutrition program funds.

<sup>34</sup> Effective January 1, 2019

A micro-purchase may be appropriate in the following types of situations:

- The CE has insufficient refrigerated or storage space to store a large quantity of items. Therefore, the CE must break its purchases into smaller amounts in order to store food items safely.
- The CE is located in a remote area or is providing meals or snacks to a very small number of students, and there are few, if any, vendors willing or available to submit small purchase offers for the **limited** quantity of products and/or services the CE needs to procure.

Micro-Purchase Scenario Chart		
Purchase Scenario	Is Micro-Purchase Applicable?	Questions to Ask
Single purchase or transaction for computer paper, ink cartridges, paper towels from the same supplier	If the total amount of the single purchase or transaction—aggregate amount—does not exceed <b>\$10,000</b> , <sup>35</sup> the micro-purchase method may be used.	<ul style="list-style-type: none"> <li>♦ <i>Will these same items be purchased more than one time?</i></li> </ul>
Single purchase or transaction from Supplier 1 for computer paper and ink cartridges <i>and</i> Second single purchase or transaction from Supplier 2 for paper towels and cleaning supplies	If the amount of each purchase or transaction—aggregate amount—does not exceed <b>\$10,000</b> , <sup>36</sup> the micro-purchase method may be used for each purchase or transaction.	<ul style="list-style-type: none"> <li>♦ <i>If so, what procurement method will result in the most economical purchase?</i></li> <li>♦ <i>Will the CE get a more competitive price by using a different procurement method?</i></li> </ul>
One year maintenance contract for a copier machine with a renewal option for an additional year.	If the total amount for the contract—aggregate amount—does not exceed <b>\$10,000</b> , <sup>37</sup> the micro-purchase method may be used.	<ul style="list-style-type: none"> <li>♦ <i>Will the micro-procurement method result in the most economical purchase?</i></li> <li>♦ <i>Will the CE get a more competitive price by using a different procurement method?</i></li> </ul>

Any costs incurred as a result of the CE intentionally breaking larger purchases into smaller amounts to qualify under the micro-purchase threshold are unallowable costs.<sup>38</sup>

<sup>35</sup> Effective January 1, 2019

<sup>36</sup> Effective January 1, 2019

<sup>37</sup> Effective January 1, 2019

<sup>38</sup> An unallowable cost or expense cannot be paid using school nutrition program funds.

The following guidance must be used when making a micro-purchase.

- **Aggregate.** The aggregate total for a micro-purchase amount is the total cost for a single invoice for a single purchase or transaction. It is not an accumulation of weekly, monthly, or annual purchases for a specific product and/or service—it is an individual purchase or contract with an individual invoice or contracted price.<sup>39</sup> However, the total cost for a micro purchase may be broken into multiple payments which are paid as each product and/or service is delivered or when specified expectations are met. In these cases, the aggregate is the total cost when all payments are totaled.

***Examples of Aggregate Amounts for Different Types of Micro-Purchases***

*One-Time Only Purchase:* The CE bought \$137.16 in fresh apricots, figs, almonds, and fennel for a tasting event and a pound of ground clove as a one-time yearly purchase. If the tasting event goes well, the CE plans to add new menu items in the next school year. The invoice included 14 pounds of fresh apricots, 4 pounds of shelled almonds, 10 pounds of fresh figs, 8 pounds of fresh fennel, and 1 pound ground cloves. All items were listed on the same invoice, and the cost was paid in one payment. The total aggregate cost for this micro-purchase was \$137.16.

*Delivery of a Single Purchase over a Period of Time:* The CE ordered a computer, a printer, printer cartridge refills, printer paper, and a surge cord protector for a total of \$1,826.45. The printer cartridge was not in stock at the time of ordering, but the remaining items could be delivered. The computer, printer paper, and surge cord protector were delivered the day after the order was placed. The remaining items were delivered one week later. The vendor submitted a delivery invoice on the day of delivery specifying the products delivered. Though the CE received two separate delivery invoices, the items were ordered in a single transaction. The total aggregate cost for this micro-purchase is \$1,826.45.

*Very Small Routine Purchase:* A small CE places an order for fresh produce (fruits and vegetables) every two weeks. Typically, the fresh produce order has a cost of less than \$150 dollars each two weeks. Because this is a routine purchase, the CE contacted multiple vendors to determine if there were vendors that would give the CE a better price through the small purchase method. However, the CE was not able to obtain a small purchase offer for bi-weekly, monthly, or quarterly purchases because of the small quantity and the fluctuating price of fresh fruit and vegetables. Since the CE cannot get quotes for a small purchase contract, the CE currently makes a separate purchase every two weeks using the micro-purchase method. Each bi-weekly purchase is a separate micro-purchase; therefore, each purchase has its own aggregate amount. The CE has created a plan for equitable distribution of purchases and

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<sup>39</sup> A contracted price may be provided in writing by the vendor or may be a verbal agreement between the two parties.

*has documented its efforts to obtain small purchase quotes and its equitable purchasing process.*

- **Buy American.** The Buy American provisions apply to micro-purchases.<sup>40</sup>
- **Competitive Purchasing.** Micro-purchases do not require the CE to solicit quotes or compare prices as long as the price is reasonable.<sup>41</sup>
- **Cost Analysis.** When using the micro-purchase method, a formal cost analysis is not required. However, the CE must have a method to document that the cost of the products and/or services is reasonable (for example, a cost comparison). Acceptable documentation includes, but is not limited to, the following:
  - Newspaper advertisements from various suppliers/vendors
  - Online advertisements from various suppliers/vendors
  - Documentation of phone quotes from various suppliers/vendors to include
    - Supplier/vendor name
    - Name of person providing information
    - Date(s) of contact
    - Information provided, including pricing for product and/or service

Other documentation that allows TDA to determine the cost was reasonable if price wasn't the determining factor, such as:

- Maps showing distance between vendors when distance is the factor
  - Written procedures that specify micro-purchase must be used because space is the factor, such as refrigeration and storage space
- **Equitable<sup>42</sup> Purchasing.** Purchases must be distributed among all qualified suppliers that are able to provide the products and/or services at a reasonable cost. The CE cannot make all of its micro-purchases from one qualified supplier.

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<sup>40</sup> See the *Other State and Federal Regulations Related to Contracts* subsection in this section for additional information on this topic.

<sup>41</sup> For procurement, *reasonable* is defined as an amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.

<sup>42</sup> In this case *equitable* means *fair* or *balanced* distribution.

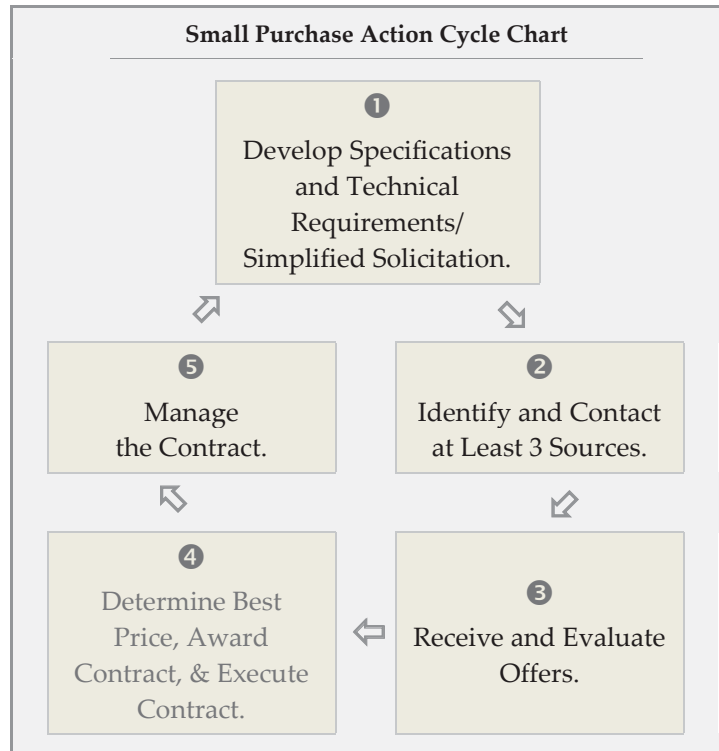
The CE must include a description of how it will use equitable distribution of micro-purchasing among qualified suppliers in its written procedures.

However, CEs that are located in rural areas may be limited in their ability to distribute purchases equitably or in a fair and balanced distribution among a number of qualified merchants or suppliers because it is not economically feasible to do so, i.e. cost and time of travel.

In these cases, the CE must document the reasons when it is not feasible for the CE to distribute purchases among a variety of suppliers. Documentation might include a mileage chart listing the distance to the next closest store or printout of an online map demonstrating the driving distance. This exception will not apply in non-rural areas.

- ***Routine Purchasing.*** Routine purchases must not be broken into smaller purchase amounts in order to qualify for micro-purchasing.

If the CE is routinely using the micro-purchase method for the same items, the CE must maintain documentation that demonstrates why this is the most suitable method for purchasing these products and/or services and why the use of another procurement method is not possible or reasonable.



## Small Purchase Method

A small purchase is appropriate when the products and/or services has an aggregate total for a single purchase or total purchase that is equal to or less than the simplified acquisition threshold. The small purchase method results in a contract between the CE and the contractor.

Any costs incurred as a result of the CE intentionally breaking larger purchases into smaller amounts to qualify under the simplified acquisition threshold are unallowable costs to the school nutrition program.<sup>43</sup>

To obtain a cost savings, a CE may use the small purchase method instead of the micro-purchase method if the amount of the purchase is equal to or less than the simplified acquisition threshold or may use the formal procurement method for purchases that qualify for informal purchasing methods.

The following guidance must be used when making a small purchase.

- **Aggregate.** The aggregate total for a small purchase amount is the total amount of the cost for a single purchase or the total cost for grouped purchases made over an extended period of time (such as a product delivered once a week or twice a month over a specific period of time).

*For Example: Purchase 1, the CE procured \$6,278.28 in fresh fruit and vegetables from a local vendor. The fruit and vegetables were procured, ordered, and delivered all at one time with a single invoice. The total aggregate cost for this small purchase is \$6,278.28.*

However, the total cost for a small purchase contract may be broken into multiple payments which are paid as each product and/or service is delivered or when specified expectations are met. In these cases, the aggregate is the total cost when all payments are totaled.

*For Example: Purchase 2, the CE procured and ordered \$21,983.61 in fruit and vegetables to be delivered every Monday for 4 weeks. Though the CE received 4 separate delivery invoices specifying the products delivered, the products were ordered in a single procurement transaction. The total aggregate cost for this small purchase is \$21,983.61.*

- **Buy American.** The Buy American provisions apply to small purchases.<sup>44</sup>
- **Competitive Purchasing.** When a CE uses the small purchase method, the CE must obtain price quotes from at least three responsible and responsive contractors.
  - Quotes may be obtained orally or in writing.<sup>45</sup> The CE must retain documentation demonstrating the price quotes.

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<sup>43</sup> An unallowable cost or expense cannot be paid using school nutrition program funds.

<sup>44</sup> See the *Buy American* subsection in this section for additional information.

- Responsible contractors are capable of providing the products and/or services described in the specifications and/or technical requirements.
- Responsive contractors provide pricing information specific to the products and/or services to be purchased.

While a CE using a small purchase method may not have developed a formal solicitation document that is comparable to one developed for IFB or RFP, the CE must have some type of documentation that demonstrates the cost quotes, specifications, and technical requirements that were given to all offerors.

A CE may choose to issue an IFB or RFP for a small purchase. In that case, the CE should develop a solicitation as described in the *Formal Procurement Methods* subsection in this section for information on conducting competitive purchasing for this type of procurement method.

- **Contract.** If the small purchase solicitation results in a contract, the CE must meet all requirements related to the development and use of a contract described in the *Solicitation, Contracts, and Managing the Contract* subsections in this section.
- **Cost Analysis.** When using the small purchase method the CE must, at a minimum, conduct a price comparison as is described in its written procurement procedures.<sup>45</sup> The CE must retain documentation on cost comparisons.
- **Price.** The CE must choose the most responsible and responsive offer with price as the primary consideration. The price must not be based on cost plus percentage of cost. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
- **Routine Purchasing.** Routine purchases must not be broken into smaller purchase amounts in order to qualify for the small purchase method.

If the CE is routinely using the small purchase method for the same items, the CE must maintain documentation that demonstrates why this is the most suitable method for purchasing these products and/or services and why the use of another procurement method is not possible or reasonable.

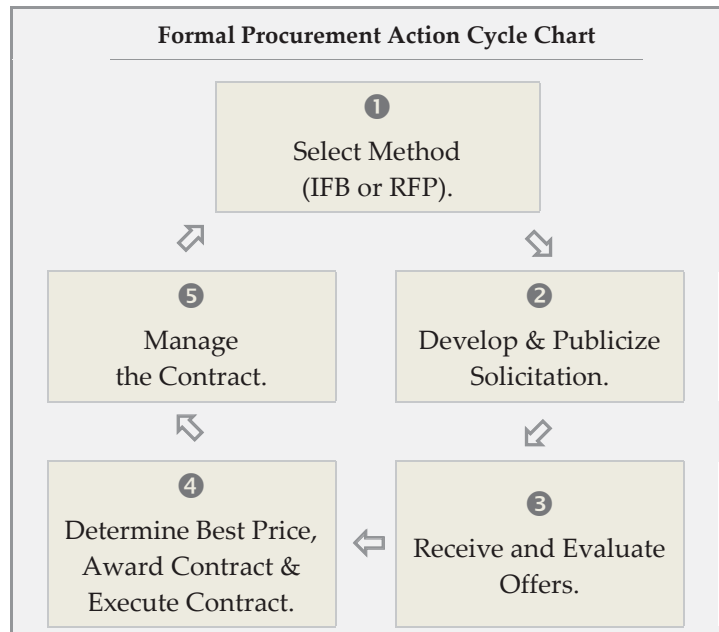
*[NOTE: If the CE routinely uses the small purchase method for the same products and/or services, the cost savings from using formal competitive offers may be significant.]*

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<sup>45</sup> See the *Records Retention* subsection in this section for additional information on documentation related to oral and written quotes.

<sup>46</sup> See the *Forecasting* subtopic in the *Written Procurement Procedures* subsection in this section for additional information on this topic.

- **Solicitation.** The CE must maintain documentation that provides the specifications and/or technical requirements given to potential contractors who provided price quotes or any method the CE uses to compare prices. All possible contractors must be given the same solicitation information.



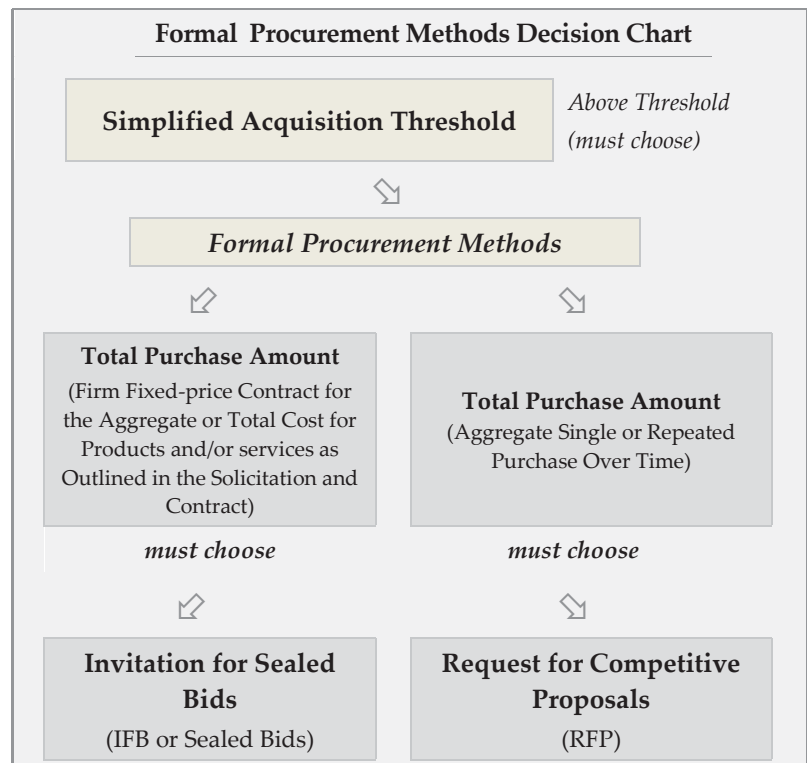
## Formal Procurement Methods

When the total estimated cost of products and/or services exceeds the simplified acquisition threshold, the CE must use a formal procurement method. Formal procurement methods are intended to be a more rigorous and prescriptive process that promotes full and open competition<sup>47</sup> and results in lower prices.

Any costs incurred as a result of improperly procured products and/or services are unallowable costs to the school nutrition program.<sup>48</sup>

### Invitation for Sealed Bids (IFB)

An IFB is a competitive procurement method for a fixed-price contract where sealed bids are submitted. An IFB is an ideal procurement method to use when the offers will only differ in price for lump sum or unit pricing.



<sup>47</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

<sup>48</sup> An unallowable cost or expense cannot be paid using school nutrition program funds.

It is commonly used for a fixed-price contract and is most effective when there are clear specifications and/or technical requirements.

An IFB contract is awarded in writing to the most responsible and responsive offeror whose price is most advantageous to the program.

The following guidance must be used when using the IFB method.

- ***Aggregate.*** The aggregate total amount for an IFB is the total amount of the cost for a single contract (or a single renewed contract). The total cost for IFB contracts is typically broken into multiple delivery invoices which are paid as each product and/or service is delivered or when specified expectations are met.
- ***Award.*** The award for an IFB will be made in writing to the lowest responsible and responsive offeror.
- ***Competitive Purchasing.*** Offers must be solicited from an adequate number of known suppliers. For there to be competitive bidding, there must be two or more responsible<sup>49</sup> offerors that respond to the solicitation for a firm fixed-price contract.
- ***Contract.*** An IFB will result in a firm fixed-price contract award.
- ***Cost Analysis.*** When using the IFB method, a formal cost analysis or price comparison as described in the CEs written procurement procedures is required.<sup>50</sup>
- ***Credits, Discounts, and Rebates.*** In a firm fixed-price contract, the winning contractor is not required to return credits, discounts, and rebates to the SNP as the contractor factors them into the fixed price for the contract period.
- ***USDA Food Values.*** In a firm fixed-price contract, the winning contractor must ensure that the value of USDA Foods is returned to the SNP.
- ***Evaluation of the Offers.*** When the sealed bids are opened, the CE must use the rubric or scoring tool that was provided in the solicitation to determine whether an offeror is both responsible and responsive.<sup>51</sup>
- ***Opening Sealed Bids.*** State and federal regulations mandate that the offers be opened publicly so that possible contractors and other interested parties are able to attend. The CE must provide a description of where and when the sealed bids will be opened. USDA recommends that at least

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<sup>49</sup> Able to provide the product(s) and/or service(s) as described in the solicitation.

<sup>50</sup> See the *Cost Analysis* and *Forecasting* subtopics in the *Written Procurement Procedures* subsection in this section for additional information on this topic.

<sup>51</sup> Offer that addresses the specifications and/or technical requirements expressed in the solicitation for product(s) and/or service(s).

two CE employees be present when sealed bids are opened. These employees should be directly involved with the procurement process (i.e., representatives from the School Nutrition Programs and/or from the purchasing department). School board members are not required to be present unless mandated by local policy

- If the specifications and/or technical requirements for the solicitation are complicated and the CE is not able to quickly and clearly determine which bid is most responsible and responsive, the CE may choose to announce which offers meet the criteria to be considered for an award at the bid opening and announce the actual award at a later date. If this is the case, the CE must clearly describe this process in its solicitation. This includes the time and place when the contract award will be announced.
- **Price.** The CE must choose the most responsible and responsive offer with price as the primary consideration. The price must not be based on cost plus percentage of cost. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
- **Public Advertising.** The invitation for offers must be publicly advertised with sufficient response time prior to the bid opening date to allow sufficient time for potential offerors to respond.<sup>52</sup> The IFB must be publically advertised in such a way as to ensure there is full and open competition.<sup>53</sup>

*For Example: Publicizing a solicitation in a regional newspaper may not be sufficient notification if the circulation of the paper is limited geographically. Potential contractors often check major newspapers for notification on solicitations but would not check a regional paper.*
- **Rejecting an Offer.** Any or all offers may be rejected if there is a sound documented reason.
- **Securing Sealed Bids.** As each sealed bid arrives, the bid should be date stamped and stored in a secured place until the time of bid opening.

*For Example: Locked file cabinet, locked metal box, or any other tamper-proof location.*
- **Solicitation.** The CE must provide the following information in the solicitation related to contract management:<sup>54</sup>
  - Specifications and/or technical requirements for the product(s) and/or service(s) to be purchased
  - Bonding requirements if applicable

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<sup>52</sup> See the *Solicitation* subsection in this section for additional information on this topic.

<sup>53</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

<sup>54</sup> See the *Solicitation, Procurement Purchasing Methods, Other Regulatory Contract Requirements, Awarding the Contract, and Contracts* subsections in this section for additional information on these topics.

- Method for submitting an offer
- Method and criteria for evaluating the bid
- Process for assigned staff to respond to and resolve all bid protests.<sup>55</sup>
- Contractual statements required by law
- Method for submitting a protest for the bid award

The CE must maintain documentation that demonstrates the CE's actions to release the IFB to the public as well as all communication that occurs after the bid is released.

*[NOTE: If the CE answers a question from an offeror, there has to be a method for the CE to share this information with all potential offerors. CEs commonly post this information on their websites.]*

### Request for Competitive Proposals (RFP)

An RFP is a competitive procurement method that includes specifications and/or technical requirements of product(s) and/or service(s) to be provided under a fixed price (fee) in a cost reimbursable or firm fixed-price contract where offerors submit a detailed offer for providing the products and/or services. An RFP is an ideal procurement method to use when a sealed bid method is not appropriate.

An RFP contract is awarded to the most responsible and responsive<sup>56</sup> offeror whose offer is most advantageous to the program—price and other factors are considered. The following guidance must be used when using the RFP method.

- **Aggregate.** The aggregate total for an RFP is the total amount of the cost for a single contract (or a single renewed contract). The total cost for an RFP contract is typically broken into multiple delivery invoices which are paid as each product and/or service is delivered or when specified expectations are met.
- **Award.** An RFP should be made in writing to the most responsible and responsive offer.
- **Competitive Purchasing.** Offers must be solicited from an adequate number of known suppliers. For there to be competitive bidding, there must be two or more responsible<sup>57</sup> offerors that respond to the solicitation for a contract resulting from an RFP.
- **Contract.** An RFP may be used for a firm fixed-price contract or a cost reimbursable contract.

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<sup>55</sup> See the *Protests* subsection in this section for additional information on this topic.

<sup>56</sup> Responsible is defined as *able to provide the product(s) and/or service(s) as described in the solicitation*. Responsive is defined as *an offer that addresses the specifications and/or technical requirements expressed in the solicitation for product(s) and/or service(s)*.

<sup>57</sup> Able to provide the product(s) and/or service(s) as described in the solicitation.

- **Cost Analysis.** When using the RFP method, a formal cost analysis or price comparison is required as is described in the CE’s written procurement procedure.
- **Credits, Discounts, and Rebates.** In a firm fixed-price contract, the winning contractor is not required to return credits, discounts, and rebates to the SNP as the contractor factors them into the fixed price for the contract period. However, in a cost reimbursable contract, the winning contractor is required to return credits, discounts, and rebates must be addressed to the SNP.
- **USDA Food Values.** In a firm fixed-price contract, the winning contractor must ensure that the value of USDA Foods is returned to the SNP.
- **Evaluation of the Offers.** The CE must use the rubric or scoring tool that was provided in the solicitation to determine whether an offer is both responsible and responsive.
- **Price.** The CE must choose the most responsible and responsive offer with price as the primary consideration. The price must not be based on cost plus percentage of cost.
- **Public Advertising.** The request for proposals (RFP) must be publicly advertised with sufficient response time prior to the bid opening date to allow sufficient time for potential offerors to respond.<sup>58</sup> The RFP must be publically advertised in such a way as to ensure there is full and open competition.<sup>59</sup>

*For Example: Publicizing a solicitation in a regional newspaper may not be sufficient notification if the circulation of the paper is limited geographically. Potential contractors often check major newspapers for notification on solicitations but would not check a regional paper.*
- **Rejecting an Offer.** Any or all offers may be rejected if there is a sound documented reason.
- **Solicitation.** The CE must provide the following information in the solicitation related to contract management:<sup>60</sup>
  - Specifications and/or technical requirements for the product(s) and/or service(s) to be purchased
  - Bonding requirements if applicable
  - Method for submitting an offer
  - Method and criteria for evaluating the bid

<sup>58</sup> See the *Cost Analysis* and *Forecasting* subtopics in the *Written Procurement Procedures* subsection and the *Public Advertising* topic in the *Solicitation* subsection in this section for additional information on these topics.

<sup>59</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

<sup>60</sup> See the *Solicitation*, *Procurement Purchasing Methods*, *Other Regulatory Contract Requirements*, *Awarding the Contract*, and *Contracts* subsections in this section for additional information on these topics.

- Process for assigned staff to respond to and resolve all bid protests.<sup>61</sup>
- Contractual statements required by law
- Method for submitting a protest for the bid award

The CE must maintain documentation that demonstrates the CE's actions to release the RFP to the public as well as all communication that occurs after the solicitation is released.

*[NOTE: If the CE answers individual offeror questions about the solicitation, the CE must have a method to share all questions and answers with all potential offerors. CEs commonly post this information to their websites and/or the Electronic State Business Daily (ESBD).]*

## Noncompetitive Method

A noncompetitive purchase method occurs when only one offer is received. Procurement by a noncompetitive method is an appropriate method of procurement when one or more of the following types of circumstances apply:

- ***Inadequate Competition.*** After the CE actively and appropriately attempted to solicit offers from a number of sources, competition is deemed inadequate—that is, the number of offers that met the solicitation specifications and technical requirements (i.e., responsible and responsive offers) were less than expected. This would include when a CE receives only one responsible and responsive offer.
- ***Public Emergency or Unexpected Emergency Situation.*** A public emergency (exigency) or unexpected emergency situation<sup>62</sup> will not permit a delay resulting from the additional time required for a competitive solicitation for the product and/or service. Emergency noncompetitive procurement requires TDA approval.
- ***Sole Source.*** The product and/or service is available only from a single (sole) source distributor, supplier, or manufacturer.<sup>63</sup> Sole source noncompetitive procurement requires TDA approval.
- ***TDA Authorization in Special Situations.*** TDA authorizes the CE's use of a noncompetitive procurement method. These cases are rare. TDA will notify a CE when this type of noncompetitive procurement is appropriate.

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<sup>61</sup> See the *Protests* subsection in this section for additional information on this topic.

<sup>62</sup> An unexpected emergency situation might include the failure of the refrigeration system causing products on hand to spoil and need immediate replacement or a supplier cancelling a contracted delivery without adequate notice or a Presidentially declared disaster.

<sup>63</sup> See the *Sole Source Method* subtopic that follows this subsection.

When a CE uses any noncompetitive method of procurement, the CE must retain all related documentation onsite to demonstrate compliance.<sup>64</sup> If a CE enters into a sole source contract without TDA approval, the contract has been improperly procured. All costs associated with an improperly procured contract are unallowable, including any ongoing and maintenance costs, from the nonprofit food service account.<sup>65</sup>

## Noncompetitive Type—Inadequate Competition

### Circumstance

After the contracting entity (CE) actively and appropriately attempts to solicit offers, the number of offers that meet the solicitation specifications and technical requirements are less than expected, including receiving only one offer.

### Approval

The CE is not required to seek TDA approval in this situation, but the CE must review its procurement process to ensure that actions the CE took to procure the product and/or services did not limit competition.

### Documentation

The CE must retain documentation to demonstrate that the CE (1) took appropriate actions to foster adequate competition and (2) reviewed its solicitation process to ensure that CE did not limit competition. Documentation for these purposes would include, but is not limited to, copies of advertising releases, mailing lists, communication documents, or contact logs.

### Additional Guidance

When there is inadequate competition (i.e., the CE receives fewer offers than expected), the CE must take the following actions:

1. Determine if the CE took action to promote competition.
  - Were the specifications and/or technical requirements too restrictive? This includes solicitation or contract deadline for submitting an offer and schedule for delivery of products and/or services.
  - Did the public advertising strategy target a large enough circulation area to ensure that notice was provided to an adequate number of suppliers?
  - Was there any action taken by staff or suppliers that improperly limited competition?

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<sup>64</sup> See the *Records Retention* subsection in this section for additional information on records retention requirements.

<sup>65</sup> See the *Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition* page located after the table of contents for information on how to contact TDA.

2. Review the solicitation process to ensure that the solicitation did not limit competition.

When a CE receives an inadequate number of offers for a solicitation, it is often a result of the following conditions:

- Nonresponsive or overly restrictive specifications and/or technical requirements
- Inadequate number of suppliers located in the area where public advertising occurred
- Improper market allocation schemes by suppliers

## **Noncompetitive Type—Public Emergency or Unexpected Emergency Situation**

### **Circumstance**

A public emergency (exigency) or unexpected emergency does not allow time for the full competitive solicitation process—circumstances require immediate purchasing. An emergency situation might include the failure of a refrigeration system; supplier cancelling a contracted delivery without adequate notice; or a Presidentially Declared Disaster.

### **Approval**

A public emergency or unexpected emergency situation noncompetitive procurement requires TDA approval. CEs must contact TDA immediately to initiate the approval process. To request approval to use a noncompetitive method during an emergency, the CE must submit a request to TDA in writing (paper, fax, or email).<sup>66</sup>

In cases of extreme emergency, a CE may call TDA directly to alert TDA about the situation. The request must still be submitted in writing, but a phone call will raise TDA's awareness of the need for an expedited response.

In its written request, the CE must include the following information:

- Description of the emergency situation
- Products and/or services to be procured
- Supplier, distributor, or manufacturer from whom the product and/or services will be procured
- Period of time the CE plans to use the noncompetitive method for the emergency

TDA will provide written notification of approval or disapproval.

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<sup>66</sup> See the *Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition* page which follows the table of contents for contact information for each program.

## Documentation

CEs must retain documentation about the emergency and all related procurement activities.

## Noncompetitive Type—Sole Source

### Circumstance

The product and/or service is available only from a single (sole) source distributor, supplier, or manufacturer. Procurement where there is only one offer is not necessarily sole source; there may be other potential offerors that could have submitted an offer but chose not to do so. Before offering a sole source noncompetitive contract, a CE must verify that the product and/or service can only be procured from a single source.

### Approval

Sole source procurement requires TDA approval. To request approval to use a sole source contract, the CE must submit a request to TDA in writing (paper, fax, or email)<sup>67</sup> which includes the following:

- Description of the product and/or services to be purchased
- Copies of the CE's solicitation, advertising, and other relevant documentation that indicate why the sole source method is appropriate
- Description of method used to determine the cost is reasonable
- Description of the CE's actions to ensure that the supplier, distributor, or manufacturer is sole source, i.e., including documentation of the CE's effort to contact other suppliers, distributors, or manufacturers to confirm that the product or service is not available from another source
- Description of the CE's review of the solicitation, advertising, and other actions to ensure that the original solicitation was competitively solicited
- Period of time (i.e., week, number of months, year) the CE plans to use the sole source method

TDA will provide written notification of approval or disapproval.

### Documentation:

CEs must retain records that demonstrate that (1) the product and/or service is only available from one source; (2) its efforts to solicit offers for the product and/or service from other suppliers, distributors, or manufacturers; and (3) all procurement related activities.

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<sup>67</sup> See the *Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition* page which follows the table of contents for contact information for each program.

## Additional Guidance

The sole source method of procurement is used when there is only one supplier, distributor, or manufacturer for the product(s) and/or services(s) that are being procured.

### *Identification of Sole Source Products and/or Services*

Before offering a sole source noncompetitive contract, a CE must verify that the product and/or service can only be procured from a single source. A procurement where there is only one offer is not necessarily sole source. There may be other suppliers, distributors, or manufacturers that could have submitted an offer but chose not to submit an offer.

*For Example: There are 3 companies that commonly provide the type of cooling equipment that a CE is attempting to procure. Company A chooses not to bid because it is unable to meet the delivery timeline. Company B no longer distributes the line of products that would have met the specifications and technical requirements. Therefore, Company C is the only offeror. In this situation, the single offer submitted is not sole source. Instead, it is an inadequate competitive response to the solicitation. The CE must follow the guidance for that type of noncompetitive procurement.*

For a sole source method to be used, there must be only one possible source for the product and/or service.

*How does the CE determine the product and/or service is sole source?*

1. A CE cannot accept a statement from the supplier, distributor, or manufacturer as verification that the product and/or service is only available from a single source.
2. The CE must actively attempt to solicit offers from other suppliers, distributors, or manufacturers.
3. If the product and/or service is available from other sources, but one source offers a feature(s) that other sources do not offer, the special feature cannot become the only factor that defines a product and/or service as the sole source unless the CE can document why this feature is required, not just preferred.
4. The CE must retain records that demonstrate its efforts to solicit offers for the product and/or service from other suppliers, distributors, or manufacturers.

### *Brand Name Sole Source Purchase*

When there is a compelling need, such as compatibility with current equipment, to purchase a specific brand product and/or service, the CE

must have documentation that demonstrates that other available brands are not compatible with the CE's

1. current equipment,
2. replacement part inventory, and
3. maintenance staff's expertise.

However, even if the CE meets the brand name sole source purchase criteria listed above, it must still determine if there is more than one supplier for the brand of equipment or the services. If there are multiple suppliers, the CE must follow normal procurement processes in awarding a contract.

*[NOTE: In some cases, suppliers for specific brands may be affiliated or associated suppliers which may result in collaboration among the suppliers and may restrict competition. CEs will need to address this as appropriate to ensure full and open competition.]*

If a CE enters into a sole source contract without TDA approval, the contract has been improperly procured. Any costs, including any ongoing or maintenance costs, associated with an improperly procured contract are not allowable costs and cannot be covered with funds from the nonprofit school food service account.

## Noncompetitive Type—TDA Authorization

### Circumstance

TDA authorizes the CE's use of a noncompetitive procurement method. These types of authorizations are used in special circumstances. TDA will notify the CE when it pre-authorizes a noncompetitive procurement.

### Approval

TDA pre-approves these procurements and no additional approval is needed. TDA will notify the CE when it pre-authorizes a noncompetitive procurement and will provide the following information about this authorization:

- Description of the product and/or services to be purchased
- Requirements, as applicable, related to solicitation, advertising, or other
- Description of method used to determine the cost is reasonable
- Period of time (i.e., week, number of months, year) covered by the TDA authorization for a noncompetitive procurement method.

### Documentation

CEs must retain records related to procurement activities for this authorization.

## Buy American

The Buy American provision requires schools to purchase domestically grown and processed food to the maximum extent practicable. For a food product to meet the Buy American requirement, over 51% of the final processed food product must consist of agricultural commodities that were grown domestically (sometimes, referred to as processed *substantially* using domestic agricultural commodities).

*[NOTE: Domestic food products include food products from the United States territories: Guam, American Samoa, Virgin Island, Puerto Rico, and the Northern Marian Islands.]*

The Buy American provision applies to all purchases made with SNP funds. Purchases made in accordance with the Buy American provision must follow the applicable procurement regulations calling for full and open competition.<sup>68</sup>

CEs must ensure that all solicitations and contracts for food products include a requirement that all awarded contracts will include the Buy American provision. In solicitations and contracts CEs have the authority to take the following actions related to the Buy American provision:

- Require certifications from offerors including statements on contracts and invoices.
- Designate an offeror as non-responsive if the appropriate phrasing is not included in the offer.
- Establish penalties, including contract termination, for noncompliance.

The following questions will assist CEs in establishing effective practices to support the Buy American provision in food product solicitations and contracts.

- Does the solicitation and contract language include the requirement for domestic agricultural commodities and products?
- Are the Buy American practices documented in the CE's procurement procedures?
- Do retained records demonstrate compliance, including, but not limited to, documenting exceptions, descriptions on delivery invoices and receipts, and compliant product labels?

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<sup>68</sup> See the *Competition* subsection in this section for additional information on this topic.

USDA provides the following sample language for contracts related to the Buy American provisions:

- General Statement for Solicitations and Contracts: *The District/State agency/Territory participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A domestic commodity or product is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d).*
- Required Certification from Offerors: *We require that suppliers certify the food product was processed in the U.S. and certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to us.*

**OR**

*We require bidders to certify that \_\_\_\_ (insert product name) \_\_\_\_ was processed in the U.S. and contains over \_\_\_\_ (insert % of weight or volume) of its agricultural food component from the U.S.*

### **Third Party**

Any entity or third party that purchases food or food products on behalf of the CE must

1. follow the same Buy American provisions that the CE is required to follow and
2. provide the CE with all documentation the CE requires to demonstrate that purchases are compliant with the Buy American provision.

### **USDA Foods**

When USDA Foods<sup>69</sup> items are manufactured into processed end products, 51% of resulting food products must be of United States (US) origin.

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<sup>69</sup> See *Administrator's Reference Manual (ARM), Section 21, USDA Foods* for additional information on the Buy American requirements for processing USDA Foods.

## Considerations for a Buy American Exception

The CE—not the distributor, supplier, or vendor—must determine that the use of a non-United States (US) or non-domestic food product is acceptable.

The purchase of a non-domestic food product should be an occasional not frequent occurrence. Each time a non-domestic food product is purchased or delivered, the CE must determine if the Buy American requirements are met.

*For Example: A CE received non-domestic canned peppers as part of its regular delivery the first week of January. At that time, the CE determined that the purchase of a non-domestic product was acceptable and retained documentation demonstrating why it was acceptable. In April, the CE again received non-domestic canned peppers as part of its regular delivery. To be in compliance with the Buy American provision, the CE must again determine that the receipt of a non-domestic product was acceptable and retain documentation demonstrating why it was acceptable.*

If the distributor, supplier, or vendor is repetitively unable to provide US or domestic food products, the CE should discuss the Buy American requirements with the distributor, supplier, or vendor and determine if the entity is capable of fulfilling the terms and conditions of the contract.

In the following situations, a CE may purchase food products that are an exception to the Buy American provision:

- The food product is not produced in sufficient quantities of a satisfactory quality.
- Competitive offers reveal that the cost of a domestic food product is significantly higher than the non-domestic food product.

The CE must first determine if the food product is grown in the US or not—a domestic food product or a non-domestic product:

Is the food product grown in the US or does 51% of the final processed food product consist of agricultural commodities that were grown domestically (in the US)?

If yes, the Buy American requirement is met.

If no, the CE must determine if the food product is eligible for an exception to the Buy American provision.

*Administrator's Reference Manual (ARM), Section 24, Child Nutrition (CN) Labeling and Product Documentation* provides detailed information on how to identify the origin of a product.

The CE must first determine if the CE (or the distributor, supplier, or vendor purchasing on behalf of the CE) is able to purchase a domestically grown food product in large enough quantities of a satisfactory quality so that it is not necessary to purchase a non-domestic food product.<sup>70</sup> The following questions will assist CEs in making this determination:

- |                                                                                                                                              |                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Are there other sources for purchasing a domestic food product instead of a non-domestic product?                                         | If the answer to <u>any one</u> of these questions is yes, the food product <u>does not qualify</u> for an exception to the Buy American provision. |
| 2. Is there another domestic food product that can be easily substituted for the non-domestic food product?                                  | If the answer to <u>all</u> of the questions is no, the CE <u>may purchase</u> a non-domestic food product instead of a domestic food product.      |
| 3. Is the price difference between the domestic product and non-domestic product reasonable in light of the CE's anticipated per meal price? |                                                                                                                                                     |

*Further Investigation*

*Can the availability of the product and cost range for the product be verified using a third-party system?*

As part of the process to explore whether a domestic product is available, the CE must verify that the lack of availability is accurate and that the cost range for the non-domestic product is reasonable. The CE will need to retain documentation demonstrating that there is a lack of availability and that the cost range is reasonable. USDA recommends the use of the USDA Agricultural Marketing Service (AMS) for this purpose.<sup>71</sup>

If the CE purchases non-domestic food products, it must maintain documentation demonstrating the situation that warrants an exception. TDA has developed the *Buy American Checklist for Non-Domestic Food Product Purchases* to assist CEs in maintaining documentation. This form is available at [www.squaremeals.org](http://www.squaremeals.org).

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<sup>70</sup> See the directions for additional information about availability of domestic food products by using the USDA Marketing Resource Center.

<sup>71</sup> Available at [www.ams.usda.gov/](http://www.ams.usda.gov/).

## Local Preference

CEs may<sup>72</sup> give preference or bonus points to local producers when soliciting and awarding contracts for the purchase of unprocessed locally grown or raised agricultural products as long as the preference or bonus points do not restrict full and open competition.<sup>73</sup> The CE must include its method or methods of using local preference in its written procurement procedures.

### Locally Grown and Raised Agricultural Products Chart

*Locally grown and raised foods commonly include, but are not limited to, the following:*

- |                                       |                                                                                                                |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------|
| – Beans                               | – Meat (with no additives or fillers)                                                                          |
| – Condiments                          | – Milk (unflavored fluid milk, but not flavored milk or any processed dairy products such as yogurt or cheese) |
| – Eggs                                | – Poultry                                                                                                      |
| – Fish (with no additives or fillers) | – Vegetables                                                                                                   |
| – Fruits                              |                                                                                                                |
| – Grains and flour                    |                                                                                                                |
| – Herbs                               |                                                                                                                |

*Unprocessed locally grown or raised agricultural products mean those agricultural products that retain their inherent character. The following methods are appropriate handling and preservation techniques for locally grown or raised agricultural products:*

- |                                                                                    |                                                                                                                                              |
|------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| – Addition of ascorbic acid or other preservatives to prevent oxidation of produce | – Packaging (such as placing eggs in cartons) Pasteurization of milk                                                                         |
| – Butchering livestock and poultry                                                 | – Refrigerating                                                                                                                              |
| – Cleaning fish                                                                    | – Size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding                                                |
| – Cooling                                                                          | – Vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package) |
| – Drying/ dehydration                                                              | – Washing                                                                                                                                    |
| – Forming ground products into patties without any additives or fillers            |                                                                                                                                              |
| – Freezing                                                                         |                                                                                                                                              |

<sup>72</sup> USDA regulation specifically gives the local entity the choice to use local preference for locally grown or raised products procured with school nutrition program funds or not to apply a local preference for these products.

<sup>73</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

## Defining Local

USDA regulations give the local entity the authority to define local as long as the definition does not restrict full and open competition.<sup>74</sup> For procurement, the CE may define its local geographic areas as areas located within a specified number of miles or within a geographic boundary (county, state, or multi-state). It may use different geographic areas for different types of products and for different seasons.

*For Example: A CE is located in the middle of the state and had defined two local geographic areas.*

*Local Geographic Area 1: Local products readily found with a 100 mile radius of the CE—This local area will be used for herbs, tomatoes, lettuce, potatoes, carrots, and green peppers.*

*Local Geographic Area 2: Local products readily available in the state, but not readily available within a 100 mile radius of the CE—This local area will be used for peaches, broccoli, and melons.*

### Information Box 2

#### Questions to Consider When Defining Local

- What product(s) does the SNP want to source first, and where can they be found?
- Are there products the SNP is already sourcing from nearby areas?
- What is the SNP's vision for local buying program and what types of producers can support that vision?
- How quickly does the SNP want add local products to the menu?
- Does the SNP want to couple local purchases with farm visits and educational activities with producers and suppliers?

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<sup>74</sup> A state agency must not mandate a definition and must not prohibit the use of a local entity's definition for *local* for the purposes of procurement for the SNP unless the CE's definition restricts full and open competition.

## Local Procurement Preference or Bonus Points

CEs may apply a variety of types of preferences or bonus points methods as long as the methods do not limit full and open competition.<sup>75</sup> CEs must describe all methods to be used in their written procurement procedures.

Preference or Bonus Point Method Example Chart	
<i>Method of giving local preference include, but are not limited to, to the following examples:</i>	
<b><i>Preference Applied to Price</i></b> A CE may apply the preference to the product price for local producers located with a specified radius of the CE.  <i>In its written procurement procedure, the CE states that it will give preference to local producers by subtracting a set amount from the bid price of local producers that are located within 100 miles of the CE.</i>  <i>For Example:</i> <i>When procuring fresh fruit by the pound, the CE reduces the product price by \$0.10 a pound for local producers located within 100 miles of the CE.</i>	<b><i>Preference Applied to Evaluation Points</i></b> A CE may use a tiered approach to awarding preference points for local products.  <i>In its written procurement procedure, the CE describes how it will use a tiered approach to giving local preference.</i>  <i>For Example:</i> <i>For products that are readily available within a 100 mile radius of the CE, the CE will give</i> <ul style="list-style-type: none"><li>– 10 points for a vendor located within 20 miles,</li><li>– 7 points for a vendor located within 50 miles, and</li><li>– 5 points for a vendor located within 100 miles.</li></ul> <i>For products that are not readily available within a 100 mile radius of the CE, the CE will give</i> <ul style="list-style-type: none"><li>– 10 bonus points for vendors located within the state and</li><li>– 5 bonus points for vendors located out of state.</li></ul>

## Local Preference in the Solicitation and Contract Award

If a CE gives preference or bonus points for local producers, the CE must describe the way the local preference or bonus points will be used in its written procedures and provide this information in the solicitation.

*[NOTE: While a CE may give preference or bonus points to local contractors, local cannot be listed as a specification or technical requirement on the solicitation. If local was designated as a specification or technical requirement, the exclusion of all non-locally grown agricultural products would restrict full and open competition.]*

A CE must not award a contract based solely on local preference.

- **For an IFB**, if all points are equal for a local and a non-local producer based on the evaluation criteria, the CE must award the contract based on the most cost effective use of federal funds.
- **For an RFP**, the CE must award the contract with primary consideration<sup>76</sup> given to the cost of the product but must also apply all other evaluation criteria in determining the most cost effective use of federal funds.

<sup>75</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

## Other Local Preference Regulations

In the case of local preference, there are differences in the federal and state regulations as they apply to entities that are required to comply with the Texas Education Code (TEC).

- TEC requires (1) that school districts and charter schools define local preference as geographically within the state of Texas and (2) that a contract must be awarded to a local supplier over a non-local supplier if both meet the terms and conditions described in the solicitation.
- USDA regulations state (1) that SNPs have the authority to apply local preference in a variety of ways as long as the end result is the most cost effective use of federal funds or not use local preference in procurement and (2) that a contract cannot automatically be awarded to a local supplier over a non-local supplier if both meet the terms and conditions described in the solicitation.

### Information Box 3

#### Local Preference or Bonus Points Example

The CE reduces the offer price by \$0.10 if the supplier meets the local preference criteria.

	Supplier Price	Meets Geographic Preference?	Price with Preference Points
Supplier 1	\$1.97	No	\$1.97
Supplier 2	\$2.10	Yes	\$2.00
Supplier 3	\$2.03	No	\$2.03

**If the award is an IFB with firm fixed price,** Supplier 1 is awarded the contract.

**If the award is an RFP,** the SNP will evaluate all criteria, including primary consideration for cost, and then make the award. Because there are additional criteria for determining this award, it is possible that the supplier with the lowest cost price may not be awarded the contract.

The school district or charter school must use procurement practices that are compliant with TEC regulations when procuring products and/or services for educational purposes; however, when the CE is making purchases for the school nutrition program, the CE's procurement actions must be in compliance with USDA regulations.

*For Example: An SNP, located on the border of Texas and New Mexico, issues a solicitation for fresh melons and applies bonus points for potential producers located within 90 miles. Two offers receive the same high score on the evaluation.*

- One from a Texas farm 60 miles away
- One from a New Mexico farm 5 miles away

*If this contract fell under TEC regulations, the contract must be given to the Texas farm.*

*However, because this purchase will be paid from school nutrition program funds, USDA regulations allow the SNP to define local to include farms located in New Mexico. In this case, the CE may award the contract to the New Mexico farm if it is the most cost effective use of federal funds.*

<sup>76</sup> See the *Awarding the Contract* subsection in this section for additional information on primary consideration.

## Other Regulatory Contract Requirements

When federal funds are used, CEs must include specific regulatory and legislative provisions in all contracts. This subsection provides general explanations of what is required.

For these requirements, the term, contract, applies to both legal contracts and operational agreements and applies to CEs and third-party entities acting on behalf of CEs.

### **BYRD, Anti-Lobbying**

*(31 U.S.C 1352)*

Applies to contracts exceeding \$100,000 using federal funds; requires contractor to complete specific forms related to lobbying (influencing or attempting to influence) in connection with obtaining a contract.

### **Civil Rights/Discrimination**

*Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities*

Applies to contracts using federal funds; prohibits the discrimination to all eligible program participants on a basis of age, color, disability, national origin, race, and gender.

### **Clean Air and Water Act and Federal Water Pollution Control Act**

*Clean Water Act, 42 U.S.C. 7401-7671q; Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); and Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15)*

Applies to contracts exceeding \$150,000 using federal funds; requires compliance with all applicable standards, orders, and regulations; prohibits the award of contracts to contractors that are in violation of Clean Air Act. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

### **Contract Work Hours and Safety Standards Act**

*40 U.S.C. 327-330 Sections 103 and 107 as supplemented by Department of Labor regulations (29 CFR Part 5)*

Applies to contracts that involve mechanics or laborers exceeding \$100,000 using federal funds; establishes standards for hourly and salaried employees related to workweek and overtime.

**Copeland Anti-Kickback Act**

*(18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3)*

Applies to construction contracts using federal funds; prohibits a contractor or subcontractor from inducing kickbacks from employees.

**Davis-Bacon Act**

*40 U.S.C. 276a to 276a-7 as supplemented by Department of Labor regulations (29 CFR Part 5)*

Applies to construction contracts exceeding \$2,000 using federal funds; requires contractors and subcontracts to include actual wage determinations in bid specifications and contracts.

**Energy Policy and Conservation Act**

*Public Law 94-163, 89 Statute 871*

Applies to contracts using federal funds; establishes standards for the promotion of energy and water conservation methods when feasibly obtainable.

**Equal Employment Opportunity**

*41 CFR, Chapter 60. Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60)*

Applies to construction contracts using federal funds; prohibits hiring practices that do not provide an equal opportunity of all persons without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

**Health and Safety Certifications, Licensing, or Regulations**

*Local, state, or federal health and safety certifications, licensing, or regulations*

Applies to contracts using federal funds; requires all contractors to meet applicable local, state, and federal health and safety certifications, licensing, or regulations which include, but are not limited, to facility use, food establishment, and authorized providers.

**Rights to Inventions (Patent Rights, Copyright and Rights)**

*Pertaining to patent rights, copyright and rights in data*

Applies to contracts using federal funds; requires all contractors to observe all applicable patent rights, copyright, and rights laws in operating the program.

## **Solid Waste Disposal Act**

*Section 6002 as amended by the Resource Conservation and Recovery Act*

Applies to contracts exceeding \$10,000 using federal funds; requires contractors to maximize energy and resource recovery by using recycled materials and/or recycling waste products when reasonable, cost appropriate, and available.<sup>77</sup>

*[NOTE: The CE needs to determine what kinds of purchases and/or services are required to meet this provision. The CE should consider what is reasonable, cost appropriate, and available to the CE.]*

## **Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms**

*Necessary affirmative steps to procure from minority firms, women's business enterprises, and labor surplus area firms whenever possible*

Applies to contracts using federal funds; requires contractors to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises whenever to the maximum extent possible.

## **Solicitation**

A solicitation<sup>78</sup> is prepared by the CE to describe the products and/or services the CE wants to acquire. Regulations specify that the solicitation must clearly define the items or services needed in order for the offerors to properly respond to the solicitation. The solicitation is intended to level the playing field so that all offerors have an equal opportunity to compete for the award of the contract.

*[NOTE: Although every aspect of the procurement process is important, if the solicitation is poorly prepared, the offers submitted will match the poor quality of the solicitation.]*

### **Solicitation for Small Purchases**

When products and/or services are procured through a small purchase method, the solicitation may take many forms because quotes for a small purchase may be accomplished by phone, email, or other method. To maintain accurate records, the CE's written procurement procedure should clearly describe how the CE will document solicitations for small purchases.

At a minimum, the CE must keep a record of contact information for all potential contractors that the CE contacted or attempted to contact, specifications and/or technical requirements provided to the potential contractors, offers or pricing information received, the method for determining the award, and the recipient of an award.

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<sup>77</sup> The following websites provide additional information on possible waste management actions to meet this requirement: Environmental Protection Agency at <https://www3.epa.gov/wastes/conserve/tools/cpg/products/index.htm>; USDA, Biopreferred at <http://www.biopreferred.gov/BioPreferred/faces/pages/ProductCategories.xhtml>.

<sup>78</sup> Micro-purchases do not require a solicitation.

TDA has developed a sample form that may assist CEs with retaining this documentation. See the *TDA Resources* subsection of this section for additional information on this form and others TDA has developed to assist CEs with procurement.

### **Solicitation, IFB or RFP**

When products and/or services are procured through either formal procurement method (IFB or RFP), the solicitation takes the form of documentation that describes the specifications and/or technical requirements for the products and/or services, the method and criteria for evaluation of responses, a process and schedule for submitting an offer, and the form of contract with standard terms. The standard terms are also called the *terms and conditions*. To maintain accurate records, the CE's written procurement procedure should clearly describe how the CE will develop and retain the solicitation document prepared for IFBs and RFPs.

The following issues must be addressed in a solicitation document for an IFB or RFP and, if applicable, to a small purchase.

#### *Adjustment or Escalation Clause*

If the fixed price is linked to an independent wholesale index, the index must be named and the frequency of the adjustment must be indicated.

#### *Bonding Requirement*

The solicitation must provide a description of the applicable bonding requirement if any, included in the solicitation.<sup>79</sup>

#### *Contract Award Type*

The solicitation must provide information to the offerors on the possible ways the CE may award the contract—one award to one offeror or multiple awards to different offerors by category group or line item. The CE should consider the following issues in making this decision:

- Will awarding one contract for the total purchase result in a cost savings?
- Will awarding one contract for the total purchase encourage more potential contractors to submit offers?
- Will awarding one contract for the total purchase limit competition because fewer potential contractors are able to respond to the quantity or variety in the solicitation?
- What are the facility and staffing requirements for the contract awarded by total purchase or by multiple contracts?

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<sup>79</sup> See the *Bonding Requirement* subtopic in the *Other State and Federal Regulations Related to Contracts* subsection in this section for additional information on this topic.

### *Cost-Reimbursable Contract*

The solicitation for a cost-reimbursable contract must include or address the following functions:

- Allowable costs (materials + direct labor hours) as defined in applicable regulation.
- In a cost-reimbursable contract cost plus a percentage of costs is unallowable. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
- Ceiling price that the contractor exceeds at its own risk.
- Method the contractor will use to identify and apply rebates, credits, and discounts and any USDA Foods values used by the contractor which at a minimum must occur yearly, but may occur more often.

A CE may include a right-to-audit provision in the solicitation (and contract) to ensure that it has routine access to the information necessary for the CE to verify that the CE has received accurate crediting for USDA Foods values and applicable credits, discounts, and rebates.

### *Credits, Discounts, and Rebates*

USDA regulation requires that contractors provide sufficient information to permit the CE to determine if all rebates, credits, and discounts have been applied correctly in cost reimbursable contracts. The CE must include a statement of how and when this will be done in the solicitation. The CE may write an audit provision or a penalties clause into the solicitation if the contractor does not provide required information. Firm fixed-price solicitations do not need to include credits, discounts, and rebates.

### *Delivery*

The solicitation must include the expectations for when and where products and/or services will be delivered. If deliveries are to be made to schools, a list of the schools and their addresses should be included so that the offeror may calculate transportation costs.

### *Drop Delivery*

If the CE will accept a drop shipment, it must be clearly stated in the solicitation.

### *Duration of Contract*

The solicitation must contain a description of the length of the contract and expected date of contract completion.

### *Equipment*

If the offer includes the purchase or use of equipment, the CE must provide adequate information for potential contractors to respond appropriately to the following types of issues:

- Utility and space requirements
- Quality and features required
- Installation requirements

- Indication of whether the CE may retain the property and continue to make payments in accordance with an approved amortization schedule or return the property<sup>80</sup>
- Other factors which may impact the cost of purchasing equipment

#### *Estimating Quantities*

The CE will use forecasting to determine the quantities of products and/or services to provide in the solicitation.<sup>81</sup>

#### *Evaluation of Offers*

The solicitation must include the written criteria for evaluating the offer and the value for all criteria. It may include the actual evaluation rubric.

#### *Evaluation Criteria for Bid Bonus Points*

The solicitation must include an explanation when additional value or weight (bonus points or percentages) is assigned for any criteria, such as local preference.<sup>82</sup>

A CE must not use bonus points to restrict full and open competition.<sup>83</sup>

#### *Firm Fixed-price Contract*

A firm fixed-price contract may be awarded for an IFB or RFP. This type of contract is awarded to the lowest cost offer that addresses all the material terms and conditions (responsible and responsive)<sup>84</sup> of the solicitation. A solicitation document for a fixed-price contract must include the following items in the solicitation:

- Specified or stated price that is fixed for the duration of the contract.
- Maximum incentive for the contractor to control costs and perform with greatest efficiency.
- Least administrative burden on the contracting parties.

A CE may include an audit provision in the solicitation (and contract) to ensure that it has routine access to the information necessary for the CE to verify that the CE has received accurate crediting for USDA Foods.

Credits, discounts, and rebates are included in the fixed-price and, therefore, do not need to be tracked in a fixed-price contract.

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<sup>80</sup> Interest for payments for retained property is an unallowable cost.

<sup>81</sup> See the *Forecasting* subsection in this section for additional information on this topic.

<sup>82</sup> See the *Local Preference* topic in the *Other State and Federal Regulations* for additional information on using local preference. See also USDA's *Procuring local Foods for Child Nutrition Programs* available at [www.fns.usda.gov/farmtoschool/procuring-local-foods](http://www.fns.usda.gov/farmtoschool/procuring-local-foods).

<sup>83</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

<sup>84</sup> Responsible is defined as *able to provide the product(s) and/or service(s) as described in the solicitation*. Responsive is defined as *an offer that addresses the specifications and/or technical requirements expressed in the solicitation for product(s) and/or service(s)*.

If the scope of work includes products which may be packaged in varied amounts, sizes, specifications, and technical requirements, the solicitation should include clear definition of packaging requirements.

#### *Health and Safety*

Those contracted to provide services to CEs may be required to adhere to local, state, or federal safety licensing or standards. The CE must identify any expectations related to health and safety in its solicitation documents..

#### *Invoicing*

USDA regulation requires that contractors provide sufficient information to permit the CE to identify allowable and unallowable costs. The method and requirements for invoicing must be provided in the solicitation.

#### *Local Preference*

A CE may give bonus points or percentages for local preference<sup>85</sup> (as defined by the CE), but it cannot exclude a potential contractor that is not local from contract consideration. The solicitation must clearly outline the value or weight for any preference criteria and the method in which the criteria will be evaluated.

#### *Managing the Contract*

The CE must describe expectations related to the management of the contract including, but not limited to, the following issues:

- Information required on invoicing
- Delivery procedures
- Complaint procedures
- Payment procedures and processes
- Monitoring use of adjustment or escalation clause to ensure that the cost index is applied as appropriate to increase or decrease amounts as prescribed by the contract
- Process for submission of bid protests<sup>86</sup>
- Reporting requirements for credits, discounts, and rebates (may include audit requirements or penalties for not providing adequate information as required in the contract)

#### *Market Basket*

If the solicitation uses a market basket approach to encourage the submission of varied pricing options, the solicitation must include a finite list of products and/or services on the market basket list. Each product and/or service on the list must have (1) a description with the quantity to be purchased, (2) specifications and/or technical requirements for

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<sup>85</sup> See the *Local Preference* subsection in this section for additional information on using local preference. See also USDA's *Procuring local Foods for Child Nutrition Programs* available at [www.fns.usda.gov/farmtoschool/procuring-local-foods](http://www.fns.usda.gov/farmtoschool/procuring-local-foods).

<sup>86</sup> See the *Protests* subsection in this section for additional information on this topic.

each product and/or service, and (3) a description of how each product and/or service will be awarded on the contract.<sup>87</sup>

#### *Notification*

The solicitation must contain information about the process for submitting an offer, including, but not limited to, the following:

- Date bidding opens and closes
- Location and method to submit an offer
- Method and criteria for evaluating the offer
- Information or announcements about winning and losing offers
- Procedure to protest an offer including contact information for the person handling protests and timeline for submitting
- Necessary attachments, including certifications, assurances, and sample contract terms and conditions, if any

CEs may provide additional notification of invitations for sealed bids (IFBs) or requests for competitive proposals (RFPs) through postings on the Texas Comptroller of Public Accounts bid database, Electronic State Business Daily (ESBD).<sup>88</sup> This database is available to all CEs classified as governmental entities. This database is widely available to various types of potential contractors across the state and offers a venue for notification that may reach potential contractors the CE may not know about.

#### *Protests*

The solicitation must contain information about the process for submitting a protest of the solicitation, cancellation of a solicitation or other request, contract award or proposed award of a contract, and termination of the contract.<sup>89</sup>

#### *Samples for Taste Testing*

CEs may include samples for taste testing as a specification or technical requirement in a solicitation. However, the CE needs to ensure that the description of the specifications and technical requirements for taste testing clearly communicate the expectations.

The CE does need to consider if any product and/or services provided by a potential contractor will become an incentive to award a contract. Moreover, the CE should also remember that any samples provided by the potential contractor are not actually free. The offeror will include the costs for providing samples to the CE in its offer.

#### *Shared Purchasing*

A CE may create a solicitation that combines the products and/or services for other school functions with an SNP products and/or services procurement when the following conditions apply: (1) if the additional items are included in the original solicitation specifications and/or technical requirements (including quantity) and (2) if the SNP

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<sup>87</sup> See the *Market Basket* topic in the *Special Situations, Awarding the Contract* subtopic under *Awarding the Contract* in this section for additional information on this topic.

<sup>88</sup> Available at <http://esbd.cpa.state.tx.us/>.

<sup>89</sup> See the *Protests* subsection in this section for additional information on this topic.

recovers the full cost for the products and/or services. Recovered cost includes, but is not limited to, the actual cost of the product, handling, transportation, and labor. This may include a proportional share of the cost if applicable.

#### *Opening of Offers*

The CE must provide a description of where and when sealed bids will be opened.

#### *Prequalified Lists*

If the CE uses prequalified lists, the CE must ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Although the prequalification of potential contractors results in an efficient procurement process, CEs must not preclude potential offerors from qualifying for the prequalification list during the solicitation period.

Procurement procedures which incorporate prequalified lists must never unduly restrict or eliminate full and open competition.

#### *Qualitative Elements*

There are products and/or services that are more difficult to describe in objective, concrete terms—qualitative elements. When including these types of elements in a solicitation, the CE will need to provide specific outcomes or expectations, examples, and evaluation criteria to ensure that the offeror has sufficient information to submit a responsive bid.

*For Example: Point of service (POS) systems that are used to record meal type and prevent overt identification*

#### *Questions from Potential Contractors*

Because information shared with one potential contractor must be shared with all potential contractors, the CE must include a description of the location and method the CE will use to share answers to questions or clarifications potential contractors ask about the solicitation.

#### *Record Retention*

The solicitation must include a description of all applicable records retention requirements for the awarded contractor.

#### *Recourse*

The solicitation must include an explanation of any remedies in favor of the CE if the contractor cannot or does not perform as required.

#### *Services*

If the solicitation includes services to be provided, the solicitation must include a clear explanation of the scope of the services, required certifications, or licenses for those performing the services.

#### *Significant Event Dates*

The solicitation must provide detailed information on the start, major events, and end dates for the contract which includes delivery dates or other significant dates.

### *Surplus Area Firms*

The CE must include relevant information related to preferences or criteria to encourage the participation of small and minority businesses, women's business enterprises, and labor surplus area firms. This may include preference points in the offer evaluation.

Efforts must include the following:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- Dividing specifications and/or technical requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- Requiring the prime contractor, if subcontracts are allowed, to take the affirmative steps listed above.

### *Supplies*

If the offer includes supplies to be provided, the solicitation must include a clear explanation of the size, quality, packaging, or other characteristics for supplies.

### *Specifications and/or Technical Requirements*

The specifications and/or technical requirements provided in the solicitation give the offeror all the information needed to submit a competitive bid. This applies to both the purchase of products and/or services.

While this information must be specific, CEs must be careful to ensure they are not being so specific that they limit competition. However, to award a contract the CE must be able to determine if the offeror is responsible and responsive.<sup>90</sup> Therefore, the solicitation has to be written in such a way that the CE can determine which offeror is responsible and responsive and which ones are not.

*For products, specifications and/or technical requirements include, but are not limited to, the following:*

- Applicable nutrition standards
- Delivery expectations
- Basic features as well as size/weight/grade specifications and/or technical requirements
- Packaging requirements

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<sup>90</sup> Responsible is defined as *able to provide the product(s) and/or service(s) as described in the solicitation*. Responsive is defined as *an offer that addresses the specifications and/or technical requirements expressed in the solicitation for product(s) and/or service(s)*.

- Quantity
- Warranty

*For services, specifications and/or technical requirements include, but are not limited to, the following:*

- Certifications or licensing requirements
- Description of duties to be performed
- Equipment provided by CE and expected to be provided by contractor
- Hours of work
- Performance expectations
- Required outcomes
- Warranty

#### *Type of Contract*

Specific identification of the type of contract to be awarded—fixed price or cost reimbursable.

#### *Use of Brand Names*

In addition to the specifications and technical requirements in the solicitation, a brand name or equal statement may be added to the description of a product to demonstrate the type of product the CE is attempting to purchase. However, a CE cannot stipulate that the only product that meets the specifications and technical requirements is a brand name product unless it is a sole source procurement as described in the *Noncompetitive Method* subsection in this section.

## **Methods for Issuing Solicitations for an Individual Item or List(s) of Items**

There are multiple methods for issuing solicitations that a CE may use to obtain the most competitive pricing for an individual product and/or service or a list of products and/or services.

*[NOTE: The CE should keep in mind that a vendor may have more than one responsive product that meets the specifications and/or technical requirements as described in a solicitation. In these cases, the CE will need to evaluate which responsive product to accept and award the full quantity/volume for that product as described in the solicitation.]*

### **One Solicitation with a List of Items**

The solicitation describes each item on a list by quantity, specifications, and technical requirements. The list could have two items or hundreds of items. The most responsible and responsive vendor is awarded the contract for every item on the list.

*For Example: A CE issues a solicitation asking for an offer for 100 food items which includes specifications and/or technical requirements and the quantity of each item. After evaluating the offers, the CE awards the contract for the full quantity of each item on the list to one vendor.*

### One Solicitation with Groups of Items

The solicitation describes the quantity, specifications, and technical requirements for each item within a group and provides an explanation that the contract for each group of items may be awarded to different vendors. There may be two groups of items or 20 groups of items. For this type of solicitation, vendors will have the option to offer a price option for one, some, or all groups of items. The most responsible and responsive vendor for each group of items is awarded a contract. A vendor may be awarded the bid for more than one group of items, or each group of items may be awarded to a different vendor.

*For Example: A CE issues a solicitation which includes the quantities, specifications, and technical requirements for two groups of listed items: Group 1 with 5 bread items and Group 2 with 7 serving items (trays, utensils). After evaluating the offers, the CE awards the contract for the full quantity of the bread items listed in Group 1 to Company A and a contract for the full quantity of serving items listed in Group 2 to Company B.*

### Multiple Solicitations for One Item or One List

Each solicitation describes the quantity, specifications, and technical requirements for an item or list of items. The most responsible and responsive vendor for each solicitation is awarded the contract. A vendor may be awarded multiple contracts or a single contract.

*For Example: A CE issues 3 solicitation documents: (1) list of 12 condiment items which includes the quantity, specifications, and technical requirements for each item; (2) point of service software program with an explanation of specifications and/or technical requirements and needs; and (3) list of 5 types of milk which includes quantity, specifications, and technical requirements for each milk type. After evaluating each offer, the CE awards a contract for full quantity described in the solicitation to the most responsible and responsive offeror for each solicitation—in this case, 3 separate contracts.*

### One Solicitation for One Item with a Split Award by Percentage of Total Quantity

The solicitation describes the specifications and/or technical requirements for the item and provides an explanation that there will be multiple awards with each awardee being given a specific percentage of the total quantity for the item. The vendor has the option to offer a price option for one or more of the percentages of the total quantity. The most responsible and responsive vendor for each percentage for the item is awarded the contract. The number of awarded contracts is based on the percentages described in the solicitation.

*For Example: A CE issues a solicitation for beef patties with a description that provides specifications and/or technical requirements and indicates that one award will be for 60% of the total quantity/volume, a second for 20%, and a third for 20%. After evaluating the offers, the CE awards three contracts—one for each percentage described in the solicitation—60% of total quantity/volume to Company A, 20% of*

*total quantity/volume to Company B, and 20% of total quantity/volume to Company C.*

## Public Advertising

The solicitation must be publicly advertised with sufficient response time prior to the bid opening date to allow sufficient time for potential offerors to respond. Typically, a sufficient amount of time is two weeks with notification being made at least twice during that period. However, CEs should check to see if there are public advertising requirements specified by the agency or organization that has regulatory authority (federal, state, or local) over the entity for all purchases. Moreover, in cases where the offer for an IFB or RFP is expected to be complicated or lengthy, CEs should expand the notification period in these cases.

### Full and Open Competition

An IFB or sealed bid and an RFP must be publically advertised in such a way as to ensure that there is full and open competition.<sup>91</sup>

### Highest Possible Circulation

The choice of an advertising publication is expected to ensure that the announcement or notice of the solicitation has the highest possible circulation. Therefore, publicizing a solicitation in a regional newspaper may not be sufficient notification if the circulation of the paper is limited geographically. In addition to print publication, CEs should consider the value of using online publication of solicitation documents to reach wider audiences.<sup>92</sup>

### Texas Comptroller of Public Accounts, Electronic State Business Daily (ESBD)

All CEs classified as governmental entities may also post invitations for sealed bids (IFBs) or requests for competitive proposals (RFP) to the Texas Comptroller of Public Accounts, Electronic State Business Daily (ESBD).<sup>93</sup> This database is widely available to various types of suppliers across the state.

An advertisement of formal solicitations must contain the following information:

- Address and telephone number for location where any potential offeror may obtain the solicitation
- Bonding requirements, if applicable<sup>94</sup>
- Date, time, and location of the opening of offers and awarding of contracts
- Deadline and method for submission

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<sup>91</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

<sup>92</sup> The Texas Comptroller of Public Accounts, Electronic State Business Daily (ESBD) is an example of an online publication method of solicitation.

<sup>93</sup> Available at <http://esbd.cpa.state.tx.us>

<sup>94</sup> See the *Bonding Requirement* subtopic in the *Other State and Federal Regulations Related to Contracts* subsection in this section for additional information on this topic.

- General category, specification, or technical requirement for the item to be bid

*[NOTE: A CE may choose to put detailed specifications and/or technical requirements on a website or in a separate document that is provided on request instead of including lengthy specifications and/or technical requirements in the public advertising. If the CE chooses to take this option, the CE must include the location and method to access the detailed specifications and/or technical requirements in the advertising announcement.]*

- Indication of how the contract will be awarded
- Method and criteria for the evaluation of offers

*[NOTE: A CE may choose to include a summary list of the method and criteria for evaluation in the advertisement instead of the full evaluation rubric. If the CE chooses to take this option, the CE must include the location and process to access the detailed information on the evaluation method and criteria in the advertising announcement.]*

- Method of payment
- Name of the CE

## Special Situations, Guidance Related to the Solicitation

The following guidance will provide additional clarification:

### Approved Brands

CEs may specify a list of approved brands as part of a product description in addition to the specifications and technical requirements in order to demonstrate what types of products are acceptable.<sup>95</sup> In these cases, the CE must include the phrase *or equal* after each approved brand and indicate that any product that meets the same specification and technical requirement is acceptable.

### Bread Specifications

If a bread item has a standard of identity, it is still necessary to specify the whole grain profile. The U.S. Food and Drug Administration (FDA) has standards of identity for non-enriched bread products as well as the whole grain-rich and enriched products.

### Contracting with Persons and Companies for Assistance in Developing a Solicitation

When acquiring goods and services, contracting entities (CEs) may contract with persons and companies to provide technical information that the CE may use in drafting procurement specifications and/or technical requirements. This provision is intended to encourage program administrators to obtain information

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<sup>95</sup> Many CEs test and approve brands that meet their standards and student preferences. The object of testing must not be to determine the best product on the market but rather to determine which products are of acceptable quality to meet the needs of the program. Product testing procedures must provide for an objective evaluation of tested products, and documentation of test results must be maintained on file with the CE.

from as many sources as possible to assist them in drafting procurement documents.

However, if a person or company provides technical information to assist a CE in drafting procurement documents, the person or company is prohibited from submitting an offer as described in the *Potential Offerors or Interested Parties Involved in Developing a Solicitation* subtopic in the *Written Procurement* subsection in this section.

### Contract Documentation for Food Products

The CE must include a statement about the required documentation that demonstrates that food products, including commercially prepared products, meet the meal pattern or competitive food standards.<sup>96</sup> CEs should be consistent in the information requested of potential contractors. Any processed food product that does not have a yield listed in the *Food Buying Guide for School Nutrition Programs*<sup>97</sup> needs to either have (1) a CN label; (2) a signed and dated product formulation statement; or (3) depending on the product type and intended use, nutrition fact labels. The documentation must identify the contribution of the food product toward meeting the meal pattern requirements or the nutritional values required for the competitive food standards.

### Flexibility for Growth

CEs may include the possibility for an increased amount of products and/or services as long as the increase is reasonable and is clearly outlined in the solicitation. Commonly, this type of option is used for an anticipated growth in student population and participation. To be reasonable, an increase based on student enrollment should correlate to the normal increase in enrollment for the CE. If the increase included in the solicitation is not reasonable, it is not an allowable flexibility.

### Generic Terminology

When writing a specification or technical requirement for a product without specifying brand name, use a generic name or standard of identify that is usually listed under the trade name. A brief description of the product may also be included.

*For Example: Generic names of breakfast cereals include the following:*

- *Toasted oat cereal, donut-shaped*
- *Puffed wheat cereal, sugarcoated*
- *Cornflakes, sugarcoated*
- *Shredded wheat biscuits, small, sugarcoated*

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<sup>96</sup> See the *Administrator's Reference Manual*, Section 8, Breakfast; Section 9, Lunch; Section 10, Afterschool Meal Programs; Section 20, Competitive Food Nutrition Standards; and Section 24, Child Nutrition (CN) Labeling and Product Documentation for additional information on required food component contribution and competitive foods.

<sup>97</sup> Available at [www.fns.usda.gov/tn/food-buying-guide-school-meal-programs](http://www.fns.usda.gov/tn/food-buying-guide-school-meal-programs)

## Grade Specifications and/or Technical Requirements

By including grade specifications and/or technical requirements in the solicitation, the CE lets the offeror know that the products must meet or exceed the USDA grading requirements. USDA, Agricultural Marketing Service (AMS) has developed the *Understanding Food Qualities Labels* tip sheet to assist consumers in understanding the grade specifications and/or technical requirements.<sup>98</sup> When the grade specifications and/or technical requirements are omitted, the offer may be made using undesirable products. If a potential contractor offers an item that is only supplier grade, it is a nonresponsive or overly responsive bid.

## Minimum Drained Weight

It is necessary to specify minimum drained weights in specifications and/or technical requirements for canned fruits and vegetables. This ensures the minimum acceptable amount of product per can.

## Potential Offerors or Interested Parties Involved in Developing a Solicitation

A potential contractor or other interested party cannot participate in the procurement process by assisting with or drafting the procurement specifications and/or technical requirements, procedures, or documents.

*For Example: If a food service management company (FSMC) provides a cycle menu to be included in a solicitation, the FSMC cannot submit an offer for the contract.*

*If a potential consultant contractor writes a job description for the scope of work to be included in the solicitation, the consultant cannot submit an offer for the contract.*

## Procuring Fresh Fruit and Vegetables

While CEs are encouraged to take advantage of economies of scale<sup>99</sup> in order to get the best pricing, long-term contracts for fresh fruit and vegetables are not always available. In these cases, the CE needs to establish a purchasing schedule in its written procurement procedures that allows the CE to get the most cost effective pricing.

A fresh fruit and vegetable procurement schedule includes, but is not limited to, frequency of procurements and what products to purchase in each season.

*[NOTE: A schedule of purchases not only helps the CE obtain the competitive pricing, it will also assist menu planners.]*

Each time the CE purchases fresh fruit and vegetables, it must be procured correctly. The CE may use any type of procurement method or contract allowed for child nutrition programs.

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<sup>98</sup> Available at [www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Factsheet.pdf](http://www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Factsheet.pdf)

<sup>99</sup> Procuring large quantities of a product to get a better price.

## Purchase Catalog

The use of a purchase catalog is allowable if the solicitation for the purchase catalog includes specifications and technical requirements that indicate what will be purchased and quantity to be purchased. However, TDA recommends that CEs seek additional guidance from their education service centers (ESCs) before issuing this type of solicitation. If the solicitation is not done correctly, the purchases may result in unallowable costs.<sup>100</sup>

## Single, Multiple, or Split Contract Awards

The CE may award a single, multiple, or split contracts. However, if the CE plans to award multiple or split contracts, it must describe how this will be done in the solicitation so that offerors are able to give their best prices based on this possibility. This includes an indication of quantity for each award which allows the offeror to provide a best price based on the economy of scale.

*For Example: A solicitation states that 40% of a product quantity will be awarded to one company and 60% will be awarded to another. An offeror would then be able to quote a price for 40% and/or 60% of the total contract quantity.*

## Bonding Requirements

USDA has rescinded its previous guidance that bonds are required for all non-construction contracts in excess of \$50,000. Instead each CE must evaluate the products and/or services to be procured and determine if a bond is needed to safeguard any possible loss of funds.

*[NOTE: Many contracts have financial guarantees. These guarantees may serve the same purpose as a bond.]*

Since contracting entities (CEs) across Texas are in various stages of procuring products and/or services for School Year (SY) 2016-2017, CEs will apply the following guidance for all procurements that have been initiated after May 5, 2016 and before June 1, 2016:

- **FSMC Contracts**—All FSMC contracts for SY 2016-2017, including renewals for the upcoming school year, are either approved or in the process of approval. Because the bonding requirement change is being implemented for future contracts, the SY 2016-2017 FSMC contracts will not be modified to remove bonding requirements.

For SY 2017-2018, the bonding requirements will be removed from the TDA RFP template. Beginning SY 2017-2018, CEs may also remove the bonding requirement in renewals as long as removing the bonding requirement does not cause a material change. If there is a material change, the contract must be competitively rebid. The CE may also renew the contract with the bonding requirement in place.

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<sup>100</sup> An unallowable cost or expense cannot be paid using school nutrition program funds.

For SY 2017-2018, a CE issuing a new FSMC solicitation in SY 2017-2018 (1) may continue to include a bonding requirement as long as the bonding requirement does not limit competition or (2) may choose to issue the solicitation without a bonding requirement.

- **Non-FSMC Contracts, Solicitation Has Been Released, But the Contract Has Not Been Signed**—If the solicitation for SY 2016-2017 has been released and includes a bonding requirement, the CE may (1) complete the procurement process with a bonding requirement included in the solicitation and the resulting contract or (2) rescind or pull the solicitation and reissue the solicitation without the bonding requirements. CEs may want to consider if the bonding requirement prevents competition. If it does limit competition, reissuing the original solicitation without the bonding requirement may result in greater competition.
- **Non-FSMC Contracts, Procured Contract Has Been Signed**—If the CE has procured a contract for SY 2016-2017 which includes a bonding requirement, the CE may (1) allow the contract to continue as written with the bonding requirement or (2) terminate the contract if allowed by the terms and conditions of the contract and competitively rebid the contract without the bonding requirements.
- **All Construction Contracts**—All construction contracts in excess of the simplified purchasing threshold (exceeds \$50,000) are required to ensure that the federal financial interest is adequately protected by including the minimum bonding requirements in the solicitation and contract: (1) bid guarantee of 5 percent of the bid price, (2) performance bond of 100 percent of the contract price, and (3) payment bond of 100 percent of the contract price. However, if a CE determines that the federal financial interest is adequately protected without requiring the minimum bonding requirements as described in § 2 CFR 200.326, the CE may request TDA to approve a different minimum security or bonding requirement. TDA will review the request in consultation with USDA.

For all new procurements initiated after June 1, 2016, CEs will use the following guidance:

- **All New Non-Construction Solicitations and Contracts from Here Forward**—If the CE determines a bonding requirement is needed and if the bonding requirement does not prevent competition, the CE may require a bond for the products and/or services being procured. See the *FSMC Contracts* information bullet topic above for additional guidance related to new FSMC contracts and renewals.
- **All Construction Contracts**—All construction contracts in excess of the simplified purchasing threshold (exceeds \$50,000) are required to ensure that the federal financial interest is adequately protected by including the minimum bonding requirements in the solicitation and contract: (1) bid guarantee of 5 percent of the bid price, (2) performance bond of 100 percent of the contract

price, and (3) payment bond of 100 percent of the contract price. However, if a CE determines that the federal financial interest is adequately protected without requiring the minimum bonding requirements as described in § 2 CFR 200.326, the CE may request TDA to approve a different minimum security or bonding requirement. TDA will review the request in consultation with USDA.

## **When Bonds Are Used**

If the CE determines a bond is necessary, the bonding requirements may be met through the use of a bid bond, certified check, or other negotiable instrument accompanying an offer as assurance that the offeror will, upon acceptance of the bid, execute such contractual documents as required within the time specified.

The CE must describe the bonding requirements in the solicitation and the bonding requirements must be included in the final contract.

## **When a Bid Guarantee (Bid Bond) is Used**

The bid guarantee or bid bond is intended to cover the cost of rebidding and/or cost of operating without a contract if an offeror does not execute a contract with the CE after being awarded the contract. The offeror must include a bid guarantee with its offer. The CE will return all guarantees to the unsuccessful offerors when the contract is awarded and to the awarded contract as soon as the contract is signed.

## **When a Performance Bond Is Used**

A performance bond covers the cost of ensuring that the products and/or services are provided as specified by the terms of the contract. If the contractor does not provide the products and/or services as described in the contract, the performance bond covers the following costs:

1. costs incurred for correcting problems,
2. costs associated with performing the services covered in the contract, and/or
3. cost associated with procuring a new contract.

Once the contract is awarded, the contractor must provide a performance bond for 100 percent of the contract price. This bond secures fulfillment of all the contractor's obligations under the contract as part of the contract deliverables.

## When a Payment Bond Is Used

A payment bond covers the cost of materials and workers under subcontract. If the contractor fails to pay the supplier for products and services provided under the subcontract, the bond covers the cost of paying for those products and/or services.

When the contract is awarded, the contractor awarded the contract must provide a payment bond for 100 percent of the contract price which assures payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract as part of the contract deliverables.

## Cooperative Purchasing

USDA released updated guidance in the fall of 2016 which supersedes previous guidance on cooperatives that purchase on the behalf of CEs. Therefore, CEs that have created procurement procedures and processes based on earlier guidance must update their procedures and processes to align to the updated guidance.

CEs may join or form cooperative purchasing groups that make purchases on behalf of their members. These cooperatives allow members to obtain better prices through economies of scale.<sup>101</sup> Cooperatives may be nonprofit or for-profit entities.

Purchases made by the cooperative must be made in accordance with USDA regulations for Child Nutrition Programs. If there are any conflicts with other federal or state regulations, the cooperative must apply the USDA regulations since the funds are sourced from one of the Child Nutrition Programs.

In procurement regulations, there are two types of cooperatives: (1) Child Nutrition Program Operator<sup>102</sup>-Only Cooperatives (Operator-Only Cooperatives) and (2) Third Party Cooperatives.<sup>103</sup>

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<sup>101</sup> By joining together and compiling their total number of purchases, CEs get a better discount based on the increased number of product purchases—an economy of scale.

<sup>102</sup> Operator in this section means *an entity that operates a Child Nutrition Program*

<sup>103</sup> USDA released updated guidance in *USDA Memo SP 05-2017, Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third-Party Services* on October 19, 2016. This memo supersedes *USDA Memo SP 35-2012, Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.*

## Child Nutrition Program (CNP) Operator-Only Cooperatives (Operator-Only Cooperatives)

*Any type of agreement that is formed solely among CNP operators including regional education service center (ESC) cooperatives*

### Establishment of an Operator-Only Cooperative

This type of cooperative does not have to be procured. However, CEs must initiate the creation of these types of cooperatives or, in the case of the Texas ESCs, be established by state law and regulation to procure on behalf of specific entities—public school districts and charters. Membership in this type of cooperative cannot be solicited.

### Fees for an Operator-Only Cooperative

Operator-only cooperative membership may include a fixed fee to cover the overhead or administrative costs as specified in the cooperative agreement.

### Unanticipated Profits

Operator-only cooperatives are intended to help CEs make purchases that result in the most cost effective use of federal funds. Therefore, regulations include a requirement that unanticipated profits from cooperatives be returned to the CE.

#### *For-Profit Cooperatives*

At the end of the contract year, the cooperative must return all profit in excess of the profit margin as described in the contract to the participating CEs.

- If there is a membership fee, the contractor must distribute to the members any funds received over the profit margin as described in the contract to the members.
- If the CE is not charged a fee and the contractor's profit is derived from its transactions with other entities, the cooperative must distribute to the members any amounts received over the profit margin as described in the contract to the members.

#### *Nonprofit Cooperatives*

At the end of the contract year, if there is a membership fee or charge for services provided, nonprofit cooperatives must return all funds in excess of cost of operating the cooperative to the CEs participating in the cooperative. TDA recommends that cooperatives include this process in their agreements.

### Management of an Operator-Only Cooperative

Each CE is responsible for monitoring the performance of the cooperative. Written agreements which delineate the roles and responsibilities for all involved will help to ensure that proper procurement occurs. However, having an agreement that delineates

roles and responsibilities does not release the CE from its responsibility for monitoring the performance of the cooperative.

### Procurement by an Operator-Only Cooperative

All purchases made on behalf of the cooperative members must follow (1) all USDA procurement regulations and (2) State and local procurement requirements if more restrictive as long as these regulations are not in conflict with USDA regulations. While the cooperative is making the purchases on behalf of the member CEs, each CE is still responsible for retaining documentation that these purchases are compliant with all regulations.

- *Material Change:* Material change requirements apply to Operator-Only Cooperative procurements.  
  
A change—increase or decrease—in cooperative membership may cause a material change. Therefore, Operator-Only Cooperative agreements must clearly describe the expected level of membership for each participant, including, but not limited to, adding members and cancelling membership.
- *Credits, Discounts, Rebates, and USDA Foods Values:* Operator-Only Cooperatives must provide members with all applicable credits, discounts and rebates and USDA Foods Values. In these cases, the cooperative must provide the CE with documentation that demonstrates compliance.
- *Operator-Only Cooperative Contracts with a Third Party Contractor:* If an Operator-Only Cooperative engages a third-party contractor or agent to manage or purchase products and/or services on behalf of the Operator-Only Cooperative, the third-party must be procured in a manner consistent with all USDA regulations and guidance. Any added purchases or services provided by a third-party that are not procured properly may create a material change.<sup>104</sup> Any products and/or services that are not procured properly may result in unallowable costs.<sup>105</sup>
- *Price:* A price based on a cost plus percentage of cost is not allowed for any purchases made on behalf of CEs by an Operator-Only Cooperative. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
- *Vendor List for Products:* In specific circumstances, an Operator-Only Cooperative may award a bid to a group of approved produce vendors with the intention that each CE will order products and/or services through an *on demand* method or request. To be allowable, the

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<sup>104</sup> See the *Material Change* topic located in the *Contracts* subsection in this section for additional information on this topic.

<sup>105</sup> An unallowable cost or expense cannot be paid using school nutrition program funds.

solicitation must include specifications and/or technical requirements that establish reasonable total estimated cost and quantities (cost analysis and forecasting) of the products and/or services to be purchased. By describing the total cost and quantities in the solicitation, all potential offerors know what is being solicited and are able to give CEs the most cost effective pricing.

When a vendor list is used, the solicitation must also clearly state that a vendor list will be used and must describe how a vendor is approved to be on the list. When CEs use a vendor list, they must ensure that use of the list does not limit competition.

## Third Party Cooperatives

*Any type of cooperative agreement that is formed by sources that are external to CEs which includes the following types of cooperatives:*

### ***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. This type of cooperative includes, but is not limited to, state agency buy boards.*

### ***Interagency Agreements***

*Public, private, and nonprofit entities formed for the purpose of procuring goods and services. This includes, but is not limited to, county buying groups and education technology hubs.*

### ***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. This type of cooperative includes, but is not limited to, membership buy boards and subscription services.*

## Establishment of a Third Party Cooperative

This type of cooperative does not have to be procured by the CE. Instead, a CE is given the option to join or participate in order to gain access to a price list of products and/or services.

## Fees for a Third Party Cooperative

CEs may pay a fee to cover overhead or administrative costs for third party cooperatives. These fees must be specified in the agreement. These fees do not constitute a competitive procurement. A cost plus percentage of cost fee is not

allowable for any type of fee structure. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).

### **Procurement for a Third Party Cooperative**

The following types of procurement may occur through all types of third party cooperatives:

- *Micro-Purchase Method:* If the amount of the purchase is equal to or less than **\$10,000**, the product or service may be procured from a third party cooperative using a micro-purchase method as long as the micro-purchase requirements, as described in this section, are met. A membership fee that is equal to or less than **\$10,000** can be a micro-purchase. It is the CE's responsibility to retain documentation that demonstrates the CE's compliance with the micro-purchase requirements.
- *Price:* Price must be the primary consideration for awarding a contract or making a purchase. A price based on a cost plus percentage of cost is not allowed for any purchases made on behalf of CEs by a Third Party Cooperative. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).
- *Small Purchase Method and Formal Procurement Method:* The third party entity's procurement practices determine how a CE may use a third party entity for purchasing.
  - If the CE is member of a third party cooperative that follows USDA procurement regulations for small and formal method purchases as described in this section, the CE may make purchases through the third party cooperative without additional procurement actions. It is the CE's responsibility to retain documentation that demonstrates that the third party cooperative follows USDA procurement regulations for products and/or services procured. The records may include, but are not limited to, the solicitation and contract, advertising documentation, and written procedures and processes.
  - If the third party cooperative does not follow USDA procurement regulations as described in this section, the CE may consider the price from the third party cooperative as one source of pricing for small and formal method purchases (i.e., a bid or an offer). In these cases, the CE must obtain additional competitive offers using a solicitation process as defined by the USDA procurement regulations described in this section.

After obtaining additional offers, the CE will evaluate the price from the third party entity and the additional offers. Then, the

CE will purchase (or award the contract to) the most responsive and responsible offeror with price as the primary consideration. It is the CE's responsibility to retain documentation that demonstrates the CE's compliance with the required procurement process.

### Individual CE Purchases

Even if a CE joins a cooperative, the CE is not required to make all of its purchases through the cooperative—the CE may decide to purchase select products and/or services outside of the cooperative if it is in the best interests of the CE or program.

However, if the CE has agreed to purchase specific products and/or services through the cooperative, the CE cannot purchase these products and/or services from another source until the quantity or amount the CE agreed to purchase is exhausted.

## Agent Contract

CEs may also procure an agent to make purchases on behalf of the CE. An agent is defined as

*A person or business that is procured to act on behalf of the CNP operator to procure products and/or services*

CEs must use the following guidance when they procure an agent to act on their behalf:

### Establishing an Agent Contract

An agent must be properly procured following USDA procurement regulations in order for the agent to procure on behalf of the CE. The CE paying a fee does not constitute a solicitation or contract with an agent. Agents cannot be procured if they do not openly provide the full price per purchase unit for their service.

### Fees for Agent Contract

Fees for an agent to procure on behalf of the CE must be fixed and based on purchase unit, volume, or cost. The fee cannot be a percentage of the cost.

### Management of the Agent Contract

The solicitation and contract must require that the agent conduct all competitive procurement methods with the CE's interests solely in mind. To accomplish this requirement, the procurement agent must take the following actions at a minimum:

- work closely with the CE to understand the CE's needs;
- develop solicitations on the CE's behalf consistent with USDA regulations and applicable program regulations as required;
- award contracts only to responsive and responsible contractors whose bid/offer is lowest/most advantageous to the program with price as the primary factor;

- award fixed-price or cost-reimbursable contracts, as specified by the CE, or State agency, as applicable; and
- monitor the resulting contracts on behalf of the CE as required by USDA regulations.

CEs are responsible for monitoring contractor performance to ensure compliance with all contract provisions.

### Procurement

The agent must apply USDA procurement requirements for all purchases made on behalf of the CE, including State and local procurement requirements if more restrictive as long as these regulations are not in conflict with USDA regulations. The solicitations and contracts for all purchases that the agent procures on behalf of the CE must include a statement that USDA regulations must be followed. It is the CE's responsibility to retain documentation required to demonstrate compliance with regulations.

- *Credits, Discounts, Rebates, and USDA Foods Values:* If there are financial transactions that include credits, discounts, or rebates, the agent must provide the CE with the credits, discounts, and rebates. If any transactions conducted by the agent involve USDA Foods values, the agent must insure that the CE receives these credits. In these cases, the agent must provide the CE with documentation that demonstrates compliance.
- *Material Change:* Material change requirements apply to a procured agent. Therefore, the solicitation and contract must clearly describe the expected services to be provided by the agent over the course of the contract.
- *Pre-Existing Contractual Relationships:* Agents may not use pre-existing contractual relationships instead of conducting a competitive procurement on behalf of a CE.
- *Price:* A price based on a cost plus percentage of cost is not allowed for any purchases made on behalf of the CE by an agent. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).

### Conflict of Interest

An agent, agent's parent company, or subsidiary company of the parent company or the agent publishing a solicitation on behalf of a CNP operator (or CNP operator-only cooperative) cannot respond to this solicitation. Responding to this solicitation would constitute an unfair advantage and be in violation of Federal procurement requirements.

## Consultant Contracts

Consultant contracts are intended to provide short-term or temporary services when a CE lacks the necessary resources, skills, and abilities to manage and operate the program effectively and in compliance with regulations.<sup>106</sup> Short-term or temporary services may include a single consultation or a series of consultations over a defined period of time.

*For Example:*

- *Kitchen equipment specialist provides suggestions for improving the service line equipment and recommendations for an equipment replacement schedule.*
- *Registered dietitian provides recommendations related to students with medical accommodations, new recipes, and recommended menu items for unpopular meals.*

*[NOTE: For small or rural CEs, consultant contracts are also used when budgets and staff limitations do not support a wide range of specialized skills. However, in these cases, a consultant's contract still cannot include implementing or managing the day-to-day operations of the program.]*

If the consultant services include implementing or managing the day-to-day operations of the program, a food service management contract should be used instead of a consultant's contract.

## Franchise Agreements

The services and/or products of a franchise agreement must be properly procured through a competitive process and the income and costs generated by the agreement must be compliant with the financial regulations as well.<sup>107</sup> This includes, but is not limited to, the following requirements:

- All equipment purchases with food service funds must be properly procured.
- Franchise agreement restrictions must not create circumstances that cause the CE to be noncompliant with the meal pattern or other program requirements.
- Franchise agreements must have a duration of no more than one year and may include an option for renewal clause.<sup>108</sup>
- Operational practices of the franchise must be in compliance with all applicable local and state health and safety regulations related to the purchase and resell of food under the franchise agreement.

It is the CE's responsibility to ensure that all terms and conditions of the franchise agreement and operation of franchise are compliant with all local, state, and/or federal regulations. To ensure that the franchise agreement is compliant with regulations, TDA recommends that the CE consult with its legal counsel before creating a franchise agreement.

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<sup>106</sup> Before procuring a consultant, a CE should contact its ESC child nutritionist to see if the ESC is able to provide the needed support. See Administrator's Reference Manual, Section 22, Food Service Contracts for additional information on this topic.

<sup>107</sup> See the *Administrator's Reference Manual, Section 14, Financial Information Concerning School Nutrition Funds* for additional information on this topic.

<sup>108</sup> A renewal clause cannot be automatic. Non-FSMC contracts may be renewed for an additional year three times.

## Procurement, USDA Foods Processing

A CE must competitively procure its USDA Foods processor. Moreover, any entity acting on behalf of the CE must also competitively procure its USDA Foods processor. CEs must take care after they have signed a contract with a processor not to add (piggyback) other purchases and/or services that will create a material change to a contract.<sup>109</sup>

The CE must also ensure that the USDA Foods values are credited back to the CE by its processor. The processor must provide adequate documentation to demonstrate that the crediting was done correctly. The Food Distribution Program Handbook is available at [www.squaremeals.org](http://www.squaremeals.org) for details on USDA Foods. *Administrator's Reference Manual, Section 21, USDA Foods* also provides additional guidance.

## Vendor List

For non-FSMC contracts, a CE may use a vendor list that the CE established when awarding contracts as long as the following criteria are met:

- The CE must have written procedures and/or processes for how it will use vendor lists.
- The CE must include a statement in the solicitation that the contract will be awarded to an entity on a vendor list.
- The CE must include a description of how a vendor is approved to be on the list.
- The CE must ensure that the use of a vendor list does not limit competition.

## Awarding the Contract

The CE must award the contract to the offeror that is most responsible and responsive to the solicitation based on the most cost effective use of federal funds. CEs must retain documentation demonstrating why the offeror was awarded the contract. In the evaluation process, the CE must not consider nonresponsive or overly responsive<sup>110</sup> features—the CE must only consider the responsive elements in the bid in its evaluation. A contract that is awarded based on incentives, investments, and/or value-added or overly responsive offers has not been properly procured.

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<sup>109</sup> See the *Material Change* subtopic in the *Contracts* subsection in this section for additional information on this topic.

<sup>110</sup> An overly responsive feature is one that is not requested in the solicitation.

*For Example: The CE listed a specification that the POS system automatically generates a letter to households to notify them about a student's eligibility. A responsive offer would provide information on how the vendor's system provides notification. An overly responsive offer would provide information on how the vendor's system provides notification and additional information on how the vendor's system automatically sends emails to households about a student's account.*

## Evaluation of the Bid and Award of Contract

### Responsible Contractors

The CE must only award contracts to responsible contractors who possess the ability to perform successfully under the terms and conditions of a proposed procurement and contract.

*When determining if a contractor is responsible, the CE will consider the bidding contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources.*

### Responsive Contractors

When a CE is evaluating the documentation submitted by an offeror, the CE must only consider elements that are specifically responsive to the technical requirements presented in the solicitation for offers.

Contractor provided incentives (bonuses, stamps, equipment, or other benefits) that will be received by the CE, the school nutrition program, or enrolled students that may influence the contract award must be treated the same as a gratuity, favor, or anything of monetary value given to a school nutrition program employee, officer, or agent of the CE. These kinds of incentives are nonresponsive or overly responsive elements and must not be considered in awarding the contract. See *Benefits Received in the Written Procurement Procedures, Ethical Standards (Code of Conduct)* subsection in this section for more information on this topic.

## Cost as Primary Consideration

No matter the type of contract, cost must be the primary consideration in awarding a contract.

For all contracts, the contract is awarded to the offer that meets all of the terms and conditions described in the solicitation with cost as the primary consideration. Primary consideration means giving the cost criteria the greatest weight among all criteria.

*For Example: A CE has five criteria in the solicitation evaluation. The maximum possible points are given according the following distribution:*

<i>Criteria</i>	<i>Possible Points</i>
<b><u>Cost</u></b>	<b><u>35</u></b>
<i>Financial stability, business practices</i>	5
<i>Reporting systems</i>	10
<i>Product specifications and/or technical requirements</i>	30
<i>Delivery schedule</i>	20

*In this case, cost is the primary consideration—cost is given the highest number of points among all of the criteria.*

A CE, or any entity acting on a CE's behalf, must not make a purchase or award a contract with a cost plus a percentage of cost pricing structure.

## Contract Negotiation

When a solicitation contains qualitative elements, it is common for guidance to use the word *negotiate* when CE determines which offer will be awarded the contract. In these cases, the word *negotiate* does not mean that there is a give and take interchange resulting in a contract—a give and take approach may stifle full and open competition<sup>111</sup> if it creates options that were not addressed in the solicitation. Instead, for this purpose, *negotiate* means that the CE may seek clarification or obtain equivalent elements—not negotiate equal specifications and/or technical requirements.

As the CE evaluates the offers submitted, it may find that several vendors are responsive to the solicitation but have very different approaches. In this case, the CE may conduct *negotiations* with the contractors of the top ranked offers (s) to ask for clarification about the responsive features. The CE may ask each contractor to further explain how it will address one of the specifications and/or technical requirements or to further describe a process or product included in the offer.

*For Example: The CE should not say Contractor A is also offering to provide this special service or product: Can you?*

These *negotiations* are not intended to give one contractor an advantage over another; they are intended to make sure the CE has a clear understanding of what each contractor is offering. At the end of the negotiation, the CE will award the contract to the most responsible and responsive contractor.

After all offerors have provided clarification, the CE may also ask all or the top offerors to resubmit a *best price and final offer*.<sup>112</sup>

## Awarding a Cost Reimbursable Contract

A cost reimbursable contract is effective when there are uncertainties involved in the contract performance affecting price estimates. The contract is awarded to the vendor conforming to all the material terms and conditions of the solicitation and with cost as the primary consideration.<sup>113</sup> A cost reimbursable contract cannot be awarded using an IFB solicitation; it must be awarded using an RFP solicitation.

## Awarding a Firm Fixed-Price Contract

A firm fixed-price contract is most effective when there are clear and detailed specifications and/or technical requirements. The contract is awarded to the vendor conforming to all the

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<sup>111</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

<sup>112</sup> When an offeror submits a *best price*, the offer may be a lower price or the same price.

<sup>113</sup> See the *Primary Consideration* topic in the *Awarding the Contract* subsection in this section for additional information on this topic.

material terms and conditions of the solicitation and whose offer or bid includes the best price. A firm fixed-price contract may be awarded using an IFB solicitation or an RFP solicitation.

## Awarding a Noncompetitive (Including Sole Source) Contract

Before a CE can award a contract to a noncompetitive provider,<sup>114</sup>

1. The CE must conduct *negotiations*<sup>115</sup> with the contractor for the procured purchase that includes price and terms using the same procedures that would be followed for competitive offers. These *negotiations* are intended to ensure that the CE receives the best possible price since full and open competition<sup>116</sup> for the products and/or services is not available.
2. TDA must approve all sole source contract awards.<sup>117</sup>

If one contractor offers a product and/or service that is equal to another contractor's product and/or service but has additional special features beyond the specifications and/or technical requirements in the solicitation, the CE must be able to document why those additional special features are required, not just preferred.

## Special Situations, Awarding the Contract

CEs must use the following guidance in awarding a contract:

### Awarding a Contract to an offeror Other Than Lowest Cost Offeror

There are cases where a CE can choose not to award a contract to the offeror with the lowest cost—when the lowest offeror is not the most responsible and responsive.

If the CE chooses to award the contract to a contractor that is not the lowest cost offeror, the CE must have adequate justification and documentation. In these cases, the CE must retain all documentation related to that justification.

In these cases, the contract must be awarded to the contractor that is most responsible and responsive to the solicitation as demonstrated by the score on the rubric or scale used to evaluate offers.

### Awarding the Contract to Multiple Contractors or Splitting the Contract

The CE may award the contract to multiple contractors or split the contract as long as the CE has provided notice of this possibility in the solicitation.

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<sup>114</sup> See the *Noncompetitive Method* subsection in this section for more information on this topic.

<sup>115</sup> See the *Contract Negotiation* subsection in this section for additional information on this topic.

<sup>116</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

<sup>117</sup> See the *Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition* page located after the table of contents for information on how to contact TDA regarding a sole source contract.

### Common Reasons for Not Awarding the Contract

Common reasons for not awarding the contract to the lowest offeror may include the following:

- The offer is not responsive to the specifications and/or technical requirements.
- The offeror is not responsible, i.e., contractor's integrity as documented by record of past performance or references indicates a poor record of meeting expectations.
- The financial and technical resources of the contractor are not adequate to demonstrate the contractor is responsible.
- There is evidence of the contractor's noncompliance with public policy.

### Consultant Contracts, Expenses

If a consultant contract or agreement will include expenses, including travel, these expenses must be included in the offer in order for the offer to be responsive.

The CE may allow the offeror to provide an estimate of expenses, but the estimate must be a realistic expectation of the costs based on the specifications and technical requirements provided in the solicitation.

If a consultant's offer is written so that expenses (including travel) are to be charged to the CE as separate line item costs, but there is no amount allocated in the offer for this purpose, the payment of expenses is an unallowable expense to the school nutrition program.

For expenses to be allowable, the offer and resulting contract must include a reasonable expectation of total costs by type of expense.

If the scope of work changes and necessitates an increase in the consultant's expenses, additional expenses may constitute a material change which may result in a rebid of the contract.

### Market Basket

A Market basket strategy 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 solicitation 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.

There are two types of cost analysis and scoring for market basket method purchasing:

1. Total Price Cost Analysis and Scoring for All Products—This analysis and scoring evaluation is based on the aggregate total cost or by line item total. This is the preferred method of awarding a contract.

2. Simplified Total Cost Analysis and Scoring for a Portion of All Products—This analysis and scoring evaluation is based on a representative sample of all products. In this case a representative sample must include the following:
  - Aggregate value of at least 75% of the total estimated value of the contract
  - and*
  - Highest value products from the list of products to be procured.

### Market Basket, Adding Products to an Existing Market Basket Contract

When a CE plans to make purchases beyond the products that are listed on a current market basket contract, these purchases should be made using the appropriate procurement method: micro, small purchase, sealed bid, or competitive proposal.

However, if the CE determines that adding the purchase of a limited number of products to a current market basket contract would be advantageous, the CE may do so if the following conditions are met:

#### *Solicitation and Contract*

- The option to add products not included in the current market basket contract must be described in the original solicitation and contract as a specific percentage of the estimated value of the contract. The specified percentage must be no more than 10% of the estimated value of the contract.
- Adding new products to the contract must not cause the contract to exceed the estimated total value of the contract at the beginning of the contract year.

At Least 90% of Total Estimated Value of Original Contract Used for Products Specified in Original Contract	+	Up to 10% of Total Estimated Value of Original Contract Used for Additional Purchases	=	100 % of Total Estimated Value of Original Contract
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#### *Required Separate Procurement*

- If the value for the purchase of the added products exceeds the specified percentage (no more than 10%), a separate procurement for those products must be conducted. The purchase of any additional products on an existing market basket contract that exceeds the specified percentage (no more than 10%) is an unallowable cost.

#### *Contract Renewal*

- If the contract allows a renewal option, and the renewal is approved as described in the original contract, the additional products

purchased and amounts must be included in a contract renewal amendment.

- For each year of a renewed contract, a new basis for contract value, including the actual expenditures of the previous year plus the value of the additional products must be established and included in the renewal contract.
- If the actual expenditures fall below the initial estimated value of the contract, the total contract amount will be adjust down in subsequent contract years.

#### *Documentation of Compliance*

- Program operators must maintain records of all additional products purchased to ensure that the value of additional products purchased does not exceed the specified percentage and any renewal contracts are modified as appropriate.

### **Market Basket, Simplified Total Cost Analysis and Scoring**

CEs that use the market basket simplified total cost analysis and scoring method must adhere to the following guidance.

#### *Appropriate Use*

- Market basket analysis scoring may be used as long as the published solicitation includes language that indicates (1) that the CE will use a simplified total cost analysis and (2) how the CE will apply the simplified total cost analysis and scoring.
- This method of analysis is appropriate when purchasing a list of products. It is not appropriate for equipment or service contracts.

#### *Appropriate Use for USDA Foods*

- A market basket analysis method may be used for Net-Off-Invoice (NOI) value pass through contracts and must not be used for fee-for-service processing contracts.<sup>118</sup>

#### *Contract Award*

- In all cases, (1) the contract must be awarded to the most responsive and responsible offeror; (2) price must be the primary evaluation factor; and (3) contracts must be awarded to the lowest offer or the offer that is most advantageous to the program.

#### *Product Specifications*

- Each product on the list to be procured, including those products not evaluated in the representative sample, must have clear and accurate specifications and estimated quantities.

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<sup>118</sup> See *Administrator's Reference Manual (ARM), Section 21, USDA Foods* for additional information on these types of contracts.

### *Representative Sample*

- When a CE uses a simplified total cost analysis and scoring, the aggregate value of the representative sample must be at least 75% of the estimated value of the contract to be awarded.

### *Pricing for All Products*

- Even though the CE is basing the decision for the award on the cost analysis and scoring of the representative sample, the CE must obtain prices for all remaining products to be purchased for the contract.
- The prices for the remaining products must be reasonable<sup>119</sup> and comparable to market prices for the same products in the geographic area for the quantities purchased.

*[NOTE: Ensuring that the non-representative sample prices are comparable is central to awarding cost effective contracts. Verifying that the prices are reasonable and comparable to normal market prices will prevent a potential contractor from lowering the price of the representative sample products to win the contract and raising the prices for the non-representative sample products to make up the difference.]*

### **No Offers Received**

If a CE releases a solicitation and no offers are returned, the CE should first determine if there was a problem with the solicitation.

- If there were problems with the solicitation, the CE must restart the procurement process and address all limitations.
- Unless this solicitation is for an FSMC contract, the CE may also decide to use an RFP instead of an IFB.

The following questions will assist the CE in determining what steps to take to address:

- Was the notice (or solicitation) sent to all potential offerors?
- Was sufficient time allowed for potential offerors to respond?
- Were specifications and/or technical requirements unduly restrictive so offerors were not able to bid?
- Were unrealistic procurement or delivery schedules included or requested?

### **Nonresponsive or Overly Responsive Offers**

If an offeror does not submit an offer that is responsive to the specifications and/or technical requirements described in the solicitation, the offer is considered nonresponsive or overly responsive. A nonresponsive or overly responsive offer cannot be awarded the contract.

Any extra products and/or services not described in the solicitation that are included in the offer are nonresponsive or overly responsive elements. The CE

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<sup>119</sup> See *Administrator's Reference Manual (ARM), Section 14, Financial Information Concerning School Nutrition Funds* for additional information on reasonable cost.

cannot consider the nonresponsive or overly responsive elements in awarding the contract. Extra products and/or services include, but are not limited to, the following:

- Additional equipment
- Prizes
- Stamps that can be used to obtain another item or service
- Scholarships

#### **Offers Received After the Due Date**

The CE does not need to open offers received after the due date. To provide an accurate record, the CE may record the names of offerors and date of receipt in a log in case there is a protest. The CE should address how it will handle offers received after the due date in its written procurement procedure and indicate that it will not accept offers after the due date in the solicitation.

#### **Opening Offers Prior to the Due Date**

A CE may open offers before the due date to check for minor problems (i.e., missing date, signature without printed or typed name). This check for minor problems cannot be used to change the offer—it can only be used to provide notice to the offeror and allow the offeror to correct minor errors. However, to ensure that the procurement process is fair and open, the CE should open and check the offers before the due date has passed and send a notice to every offeror at the same time with the same revision deadline to submit a correction before due date (i.e., 24 hours).

#### **Request for Best Price**

The CE may ask the top offeror(s), as determined by the rubric/scale evaluation, to resubmit a best possible price before awarding the contract. If the CE chooses to make this request, the CE cannot change the specifications and/or technical requirements provided in the solicitation or change its rubric/scale used for evaluating offers. The offeror is also not required to change its offer. While the request for the best price allows the CE to see if it is possible to obtain a more competitive price, it is not intended to be a give and take negotiation.

#### **Request for Clarification**

If the CE determines that an offeror is the most responsible and responsive as demonstrated by the score on the rubric or scale used to evaluate offers or the price, but the offeror does not fully respond to one of the specifications and/or technical requirements, the CE can request additional information to determine if the offeror can meet the specification and/or technical requirement as long as the CE does not provide additional information other than what was on the original solicitation document.

Based on the clarification provided by the offeror, the CE may award the contract or ask for a rebid. Asking for a rebid is often the best action particularly when the clarification provided by the offeror demonstrates the specifications and/or technical requirements in the solicitation were not clear.

## Contracts

Once an offeror has been awarded a contract, the CE works with the contractor to create a contract that reflects the specifications and/or technical requirements laid out in the solicitation.

A contract is

*a 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 compensations the contractor receives when products and/or services are provided.*

A CE must ensure that all contracts are the result of proper procurement procedures. All contracts, no matter the procurement method, must be awarded to a responsible and responsive offeror whose offer is the most advantageous to the program. For a fixed-price contract, the bid is awarded to the most responsible and responsive offeror with the best price. Third-party entities that procure on behalf of the CE are required to follow this same guidance.<sup>120</sup>

While a CE using a small purchase method may not have developed a solicitation that is comparable to one developed for an IFB or RFP, the CE must document activities and processes related to the following:

- Method or strategies used to obtain offers
- Product and/or service specifications and/or technical requirements communicated to potential offerors
- Cost quotes submitted by offerors

It is the responsibility of the CE to ensure that the contract requirements mirror those found in the solicitation and that all of the terms of the contract are being met. Any costs arising from a contract that was improperly procured are unallowable to the school nutrition program.

## Elements of a Contract

The following elements, at a minimum, should be included in a contract.

### General Contract Requirements

- Contract duration
- Identification of the parties in the contract

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<sup>120</sup> In cases where third-party entities have the capability to provide additional products and/or services, but these products and/or services were not part of the original solicitation, purchasing these products and/or services without proper procurement may result in unallowable cost. An unallowable cost or expense cannot be paid using school nutrition program funds.

- Required compliance certifications
- Type of contract (i.e., fixed price or cost reimbursable with fixed fee)

### **Contract Management**

- Contract renewal options, including terms, conditions, and (as applicable) provisions for price changes  
*[NOTE: Non-FSMC contracts may be renewed for an additional one year three times. After the third renewal, the contract must be rebid.]*
- Contract termination rights for cause and convenience
- Contractor recordkeeping requirements
- Default and breach of contract provisions, remedies, cancellation procedures, and penalties  
*For Contracts in Excess of \$10,000*
  - Termination for cause and for convenience clause with an explanation of when the clause applies and the basis for settlement*For Contracts That Exceed the Simplified Acquisition Threshold*
  - Administrative, contractual, or legal remedies in instances where contractors violate breach of contract terms which includes sanctions and penalties as appropriate  
*[NOTE: The most restrictive simplified acquisition threshold local or state that applies. See the Procurement Purchasing Methods subsection in this section for additional information on the simplified acquisition threshold.]*
- Procedures for contract modification

### **Invoicing and Payments**

- Method for tracking costs to ensure that the CE receives discounts, rebates, credits; USDA Foods values; and other applicable credits  
*[NOTE: CEs may include a requirement for a routine auditing procedure as defined in the solicitation.]*
- Method to 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
- Procedure for issuing payments, including sufficient information included on invoices to determine if costs are allowable
- Ownership of any equipment or software purchased by the contractor on the CE's behalf or for the contract
- Procedures for contract modification
- Required compliance certifications
- Sanctions for noncompliance

### Other Requirements

- Laws and regulations that govern the contract including the provisions described in the *Other Regulatory Contract Requirements* subsection of this section.

### Products and/or Services to Be Provided

- Product specifications and/or technical requirements
- Professional certification requirements or minimum levels for required experience or education<sup>121</sup>
- Sanitation and licensing requirements
- Scope of work (i.e., a detailed description of duties to be performed, hours of work, performance descriptions, levels of performance, and required outcomes)

## Viable IFB (Sealed) Bid Requirements

For a sealed bid to be awarded a contract, the following conditions must be met.

- A firm fixed-price contract award will be made in writing to the lowest responsible and responsive offeror. When specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually triggered.
- All offers must be publicly opened at the time and place prescribed in the invitation for bids (IFB) solicitation.
- Any or all offers may be rejected if there is a sound documented reason.
- If the IFB required a separate presentation of a bid bond, coversheet, or attachment for the offerors to use to demonstrate compliance with the IFB's responsiveness criteria, these documents may be pre-screened to determine if the bid is responsive.
- Two or more responsible offerors are willing and able to compete effectively for the business.

## Dispute Resolution

A well-written contract provides a method to resolve any disputes whether the dispute is caused by poor communication or results from a possible breach of the contract. The written contract should include clauses which make resolution of problems, including litigation, mediation, or arbitration, feasible and economically viable. CEs may want to consult with an attorney on the appropriate contract statement necessary to address dispute resolution.

*For Example: When an attorney fee clause which stipulates that the loser pays the prevailing attorney's fees is added to a contract, it makes litigation financially possible, and it serves as a motivator for all parties to adhere to the contract because there is a cost for breach of contract other than losing the contract.*

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<sup>121</sup> See *Administrator's Reference Manual*, Section 25, *Professional Standards* for more information on requirements for continuing education/training and hiring for school nutrition program staff.

## Duration of Contract

For the school nutrition program, the duration for all contracts may be less than one year, but must not be longer than one school year with an option to renew. It is common for CEs or contractors to say that they have a multi-year contract; however, the school nutrition program does not allow contracts for a term of more than one year. There is an option to renew for three additional contract periods.<sup>122</sup> Non-FSMC contracts may be renewed for an additional year three times. FSMC contracts may be renewed for an additional year four times. If there is a material change, the contract must be rebid.<sup>123</sup>

Once a CE has a signed contract, the CE is not free to obtain offers or quotes for the contracted products and/or services from another contractor or to purchase the same products and/or services from another contractor unless one the following circumstances occur:

- The specified quantity of product as written into the contract has been purchased.
- The amount to be purchased is in addition to the quantity of the products and/or services stipulated in the contract. In this case, the CE is still obligated to purchase the quantity specified in the contract.

If the situation is appropriate for the CE to purchase from a second contractor, the CE must use the appropriate informal or formal procurement method for the purchase.

When CEs consolidate, current contracts or purchasing agreements are null and void.

## Material Change

When a CE allows a winning offeror to make changes to contract terms that are materially inconsistent with the original solicitation for the contract, the CE has undermined full and open competition<sup>124</sup> by denying all possible contractors the opportunity to compete under the same terms and conditions.

### Anticipated Change

Changes in the terms and conditions of the contract include, but are not limited to, quantity and scope of the products and/or services to be provided. If the CE stipulates expected changes in the solicitation, all potential offerors are able to include that information in their offer—it is a full and open competition and unlikely to be a material change.

The CE must rebid the contract when a change in purchasing products and/or services is inconsistent with the underlying solicitation on which the contract was based—a material change.

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<sup>122</sup> See *Administrator's Reference Manual, Section 22, Food Service Contracts* for additional information on the duration of a consultant's contract.

<sup>123</sup> See the *Material Change* subsection in this section for additional information on this topic.

<sup>124</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

Any costs arising from improper procurement are unallowable to the school nutrition program.

A material change most often occurs in one of two situations:

- When the solicitation does not mirror the contract.
- When a change is made to a contract that alters the terms and conditions of the contract substantially enough that other potential contractors who responded to the solicitation may have bid differently and more competitively if they had known about the altered terms and conditions.

Making changes to the contract terms includes the purchase of products and/or services not included in the contract or within the terms of a contract renewal.

*[NOTE: A solicitation that is written to be an open-ended procurement of additional products and/or services is likely to be an inappropriate procurement. When procurement is not done correctly with full and open competition, the cost of the contract and legal defense of the contract are unallowable expenses to the school nutrition program.]*<sup>125</sup>

Forecasting is an essential tool to make sure that a material change does not occur.<sup>126</sup> If a CE anticipates enrollment growth or a reconfiguration of site attendance zones, the CE should consider adding the anticipated changes to the solicitation and contract. However, even if the solicitation and contract include flexibilities based on anticipated growth or reconfigurations, the CE must still evaluate the impact of growth or reconfiguration to determine if a material change has occurred. Any increase in the purchase of products and/or services that is not reasonable may be a material change and may require a rebid of the contract.

### **Material Change, Determination**

The CE must consider the following issues when determining if there has been a material change:

#### *Increase or Decrease to the Cost of the Contract*

If there was an increase or decrease to the cost of the contract, would the increase or decrease in cost have caused offerors to quote the cost of products and/or services differently if the increase or decrease had existed at the time of the solicitation?

*If yes, it is a material change. The CE must rebid the contract.*

#### *Increase or Decrease in the Products and/or Services*

Would the prospective change materially affect the scope of services, types, and/or volume of the products and/or services in both the solicitation and resulting contract?

*If yes, it is a material change. The CE must rebid the contract.*

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<sup>125</sup> See the *Ways to Use Listed Items in Solicitation Documents* topic in the *Solicitation* subsection of this section for additional information on this topic.

<sup>126</sup> See the *Forecasting* subtopic in the *Written Procurement Procedures* subsection in this section for additional information on this topic.

#### *New Products and/or Services*

Are there new products and/or services added to an existing contract?

*If yes, it is a material change. The CE must rebid the contract.*

If there is a material change to the contract and the CE does not rebid the contract, any contractor that responded to the solicitation and did not win may file a protest to the contract award.<sup>127</sup>

## Protests

An interested party<sup>128</sup> may protest any of the following situations:

- Solicitation or other 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.

CEs and any entity acting on their behalf must have written procurement procedures in place to address and resolve protests or disputes relating to procurements.

- The CE and any entity acting on their behalf must follow its written procedure to resolve protests.
- It is the CE's responsibility to ensure that all protests are resolved.
- The CE and any entity acting on their behalf must retain all documentation related to protests.
- The CE must notify TDA when a protest is received.<sup>129</sup>

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.<sup>130</sup>
- 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.

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<sup>127</sup> See the *Protests* subsection in this section for additional information on this topic.

<sup>128</sup> 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.*

<sup>129</sup> 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.

<sup>130</sup> Violations of state or local law will be under the jurisdiction of state or local authorities.

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).

## Managing the Contract

The CE must have procedures in place to ensure that contractors perform in accordance with the contract or purchase order terms, conditions, specifications, and technical requirements. This includes, but is not limited to, verifying the following:

### Cost Adjustment and Escalation

- Index used for an adjustment or escalation clause is applied correctly. Cost adjustments include that the index stipulated in the contract is the one used by the contractor for any cost adjustment or escalation as well as the contractor returning funds to the CE if there is a downward adjustment if the index indicates that prices should be lowered. Documentation related to cost adjustments and escalations must be retained.

### Credits, Discounts, and Rebates and USDA Food Values

- Applicable credits, discounts, and rebates are given to the CE. CEs may elect to include an audit clause in their solicitation and contract that is linked to payment. These clauses require the contractor to provide documentation that demonstrates compliance at regular intervals or the contractor will not receive payment. Documentation related to credits, discounts, and rebates and USDA Food values must be retained. This requirement applies to FSMC cost reimbursable contracts.
- Applicable USDA Foods values are awarded to the CE.
- A contractor cannot honor the contract terms and conditions related to credits, discounts, and rebates 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.

### Fiscal

- Products and/or services invoiced to the CE are allowable costs including that the contractor separately identifies the following 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.
- Products and/or services received from the contractor correlate to the contractor's invoices.
  - Products and/or services procured by a third-party entity acting on the CE's behalf were procured correctly.
  - Documentation related to the cost of products and/or services must be retained.

#### **Specified Products and Services**

- Products and/or services provided to the CE are representative of the products and/or services to be delivered as described in the solicitation and the contract.
- Products and/or services delivered meet the specifications and/or technical requirements described in the contract.

### **Payments for Cost Reimbursable Contracts**

The CE must not make any payment to a contractor for any cost resulting from a cost reimbursable contract that fails to include the requirements in this section. The CE must not make any payments to the contractor in excess of the contract's actual, net allowable costs for a cost reimbursable contract.

### **Ensuring That Purchases Align to the Solicitation and Contract Specifications and/or Technical Requirements**

CEs are expected to honor all contracts, whether those contracts are the result of informal or formal procurement methods. The purchase of an additional product and/or service offered by a vendor that is not included in the solicitation (i.e., added to an existing contract) may constitute a material change and may result in unallowable costs.<sup>131</sup> 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.<sup>132</sup>

In the solicitation, each product and/or service has a description which includes the quantity to be purchased. 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. 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.

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<sup>131</sup> An unallowable cost or expense cannot be paid using school nutrition program funds.

<sup>132</sup> See the *Ways to Use Listed Items in Solicitation Documents* topic in the *Solicitation* subsection of this section for additional information on this topic.

## **Additional Purchases**

A CE cannot add products and/or services to a contract unless the increase in products and/or services are named and described in the original solicitation/contract as an anticipated increase based on enrollment projections, school reorganization, or program participation. A general statement that the CE will add up to a specific number or a specific percentage of *new* products and/or services is not sufficient to allow additional purchases. All purchased items must be procured correctly. This includes new product lines. Adding products and/or services is also called *piggybacking*.

## **Response to Poor Contractor Performance**

When a contractor fails to deliver products as prescribed in the contract or delivers items that do not meet the specifications and technical requirements of the contract, it is the CE's responsibility to ensure that the contractor is providing the products and/or services as described in the contract.

To raise the issue with the contractor, the CE should contact the contractor and tell the contractor 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 contract. When the CE contacts the contractor about problems, the CE must also keep a record of the dates of all phone calls or other contacts with the contractor and what was discussed. This documentation is required for procurement records retention and will also be useful if the contractor does not resolve the problem.

If the problem is not resolved, the CE should 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. To preserve documentation, the CE should provide this notification by a method that will date stamp the date sent and date received.

If the contractor makes little or no effort to resolve the problem, the CE should implement the dispute resolution process as defined in its written procurement procedures and included in the solicitation and the contract.

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

# Additional Resources

## TDA Resources

TDA resources are available on the SquareMeals website, [www.squaremeals.org](http://www.squaremeals.org).

- *Approved Purchase List*—Form designed to provide list of products approved to purchase with information that will be helpful to menu planners and staff managing the contract.
- *Budget Tool*—Form designed to assist the CE in tracking various incomes and costs of the program, including cost analysis for products and/or services.
- *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 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.

## Institute for Child Nutrition (ICN)

- *First Choice*, a handbook for developing an effective procurement process, available at [www.nfsmi.org/documentlibraryfiles/pdf/20111129111739.pdf](http://www.nfsmi.org/documentlibraryfiles/pdf/20111129111739.pdf)
- *Procurement in the 21st Century*, manual providing specific details on the procurement process, available at [www.nfsmi.org/DocumentDownload.aspx?id=3894](http://www.nfsmi.org/DocumentDownload.aspx?id=3894)  
[NOTE: This resource is not a guidance document, but it does provide useful information.]
- *State Agency Guidance on Procurement*, a series of web-based trainings on procurement, available at [www.nfsmi.org](http://www.nfsmi.org)

## USDA

- *Understanding Food Qualities Labels*, a manual provided by USDA's Agricultural Marketing Service (AMS) that provides a guide to product labeling that indicates quality, available at [www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Facsheet.pdf](http://www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Facsheet.pdf)

## Other Websites

- Texas Procurement and Support Services (TPASS) (Formerly Texas Building and Procurement Commission), available at [www.window.state.tx.us/procurement/](http://www.window.state.tx.us/procurement/)

- Comptroller of Public Accounts, available at [www.cpa.state.tx.us](http://www.cpa.state.tx.us)
- Universal Public Purchasing Certification Council/National Institute of Government Purchasing (NIGP), available at [www.nigp.org](http://www.nigp.org)
- USDA Farm to School website, available at [www.fns.usda.gov/farmtoschool/](http://www.fns.usda.gov/farmtoschool/)

## Records Retention

The CE is required to maintain an organized accounting and financial system that includes documentation that demonstrates compliance with program regulations. Records retained for procurement must be sufficient to detail the history of procurement for each procured product and/or service, including but not limited to rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. CEs have the option to maintain records on paper or electronically.

### Information Box 4

#### 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.

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.

## Procurement System

The CE has documentation that demonstrates that CE has established internal controls to promote program integrity. This includes, but is not limited to, documentation that illustrates the following:

- Written procurement procedures including normal processes for cost analysis, selection of procurement method, ethical standards, and other requirements as described in this section
- Processes for effective contract management
- Verification of third-party entity compliance with procurement regulations

## Solicitation

Documentation that demonstrates that the CE has issued a solicitation that meets the procurement requirements—this includes, but is not limited to, all solicitation documents released as part of the procurement process and documentation that illustrates the following:

- All offers submitted in response to the procurement solicitation
- Offeror responsibilities including terms and conditions, timeline for major events, and other requirements or expectations
- Potential contractor's questions and method for sharing answers with other potential contractors
- Cost analysis (price quotes for small purchase procurement)
- Evaluation and ranking criteria for each procured products and/or services, including rubrics, scales, or evaluation tools
- Expectations for the award of credits, discounts, rebates; USDA Foods values; application of adjustment or escalation clauses; and other credits as applicable
- Public advertisement or notification for solicitations
- Specifications and/or technical requirements

## Contract

Documentation that demonstrates that the CE has issued a contract that meets the procurement requirements—this includes, but is not limited to, following:

- Actual contracts resulting from all methods of procurement
- Use of the *System for Award Management (SAM)*
- Compliance with all applicable requirements—federal, state, and local
- Health and safety certifications, licensing, or regulations as applicable
- Professional standards as applicable

## Special Situations

Documentation related to the following situations:

- Approval to use a sole source procurement or emergency method
- Inability to buy an American product
- Material change, when there is and is not a material change
- Micro-purchase equitable distribution of purchases or reason for inability to do so
- Noncompetitive method procurements
- Preference given for Small and Minority Firms, Women's Business Enterprise, Labor Surplus Area Firms, and other federal contract requirements as applicable
- Purchases made through a cooperative
- Purchases made through an agent
- Return of credits, discounts, and rebates as well as USDA Foods values to the CE/ as applicable to the type of contract including CEs participating in Group Buying Cooperatives
- Third-party compliance with procurement regulations

## 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 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.<sup>133</sup> 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.

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<sup>133</sup> 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.

## **Section 22**

# **Food Service Contracts**

**Consultants, Food Service  
Management Companies (FSMCs), and  
Vended Meals**

# Food Service Contracts

## Consultants, Food Service Management Companies (FSMC), and Vended Meals

### Section 22 , Food Service Management Companies (FSMCs) Update Guide

February 23, 2017

Updated *Section 22, Food Service Contracts* to expand the scope of this section to include consultants and vended meals in addition to food service management companies (FSMCs).

*Updated* to the section to incorporate the following United States Department of Agriculture (USDA) memo and guidance:

- *USDSA Memo SP 40-2016, Updated Guidance: Contracting with Food Service Management Companies* (June 2, 2016)
- *USDA Memo SP 35-2016, Bonding Requirements for Food Service Management Companies and Other Subcontractors* (May 5, 2016)
- *USDA Memo SP 20-2016, Nonprofit School Food Service Account Nonprogram Food Revenue Requirements* (December 23, 2015)
- *USDA Memo SP 35-2013, State Agency Oversight and Monitoring of School Food Authority Contracts with Food Service Management Companies* (April 19, 2013)
- *USDA Memo SP 23-2013, Guidance Reaffirming the Requirement that State Agencies and School Food Authorities Periodically Review Food Service Management Company Cost Reimbursable Contracts and Contracts Associated with USDA Foods* (February 12, 2013)
- *USDA Memo SP 33-2012, Fresh Fruit and Vegetable Program Fees in FSMC Contracts* (May 31, 2012)

Clarified information on the following topics:

- Consultant contracts
- Food service management contracts (FSMCs)
- Vending contracts

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**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 site name and ID if applicable) in all communication or documentation.*

**Website:** [www.squaremeals.org](http://www.squaremeals.org)

**Phone:** 877-TEXMEAL, (877) 839-6325 | **Fax:** (888) 203-6593

**Physical Address:** 1700 N. Congress, 11<sup>th</sup> Floor, Austin, TX 78701

**Mailing Address:** PO Box 12847, Austin, TX 78711-2847

**Email Contact:**

[squaremeals@TexasAgriculture.gov](mailto:squaremeals@TexasAgriculture.gov)

**Email Contact for Issues Related to Applications:**

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

[NSLP-SBP.BOps@TexasAgriculture.gov](mailto:NSLP-SBP.BOps@TexasAgriculture.gov)

*Fresh Fruit and Vegetable Program:*

[FFVP.Bops@TexasAgriculture.gov](mailto:FFVP.Bops@TexasAgriculture.gov)

*Seamless Summer Option:*

[SSO.BOps@TexasAgriculture.gov](mailto:SSO.BOps@TexasAgriculture.gov)

*Child and Adult Care Food Program:*

[CACFP.BOps@TexasAgriculture.gov](mailto:CACFP.BOps@TexasAgriculture.gov)

*Summer Food Service Program:*

[SFSP.BOps@TexasAgriculture.gov](mailto:SFSP.BOps@TexasAgriculture.gov)

**Email Contact for Issues Related to Program Operation:**

*Commodity Operations (USDA Foods):*

[CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov)

*Community Operations (Child and Adult Care Food Program and Summer Food Service Program):*

[Commuinty.Ops@TexasAgriculture.gov](mailto:Commuinty.Ops@TexasAgriculture.gov)

*Local Products:*

[LocalProducts.SquareMeals@TexasAgriculture.gov](mailto:LocalProducts.SquareMeals@TexasAgriculture.gov)

*School Operations (National School Lunch Program and School Breakfast Program):*

[School.Operations@TexasAgriculture.gov](mailto:School.Operations@TexasAgriculture.gov)

# Food Service Contracts

## Consultant, Food Service Management Company (FSMC), and Vended Meal

A contracting entity (CE) may procure a contractor to support the CE in its food service operation. However, in all cases and with all contracts, the CE is still responsible for ensuring that the program is operated effectively and in compliance with all applicable regulations.

The guidance in this section is intended to assist CEs in procurement and management of the food service contracts for 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)

CEs will find related guidance in the *Administrator's Reference Manual, Section 14, Financial Information Concerning School Nutrition Funds; Section 17, Procurement; and Section 23, USDA Foods.*

## Types of Food Service Contracts: Food Service Management Company (FSMC), Consultant, or Vended Meal

When preparing for a solicitation and awarding a food service contract, a CE must consider the types of tasks and length of the contract before determining whether the solicitation and contract will be for a consultant, FSMC, or vended meals. This section provides detailed guidance on each of the following:

### Consultant

A consultant may be procured to temporarily provide support to a CE in areas where the CE lacks the necessary resources, skills, and/or abilities. Through the services of the consultant, the CE is able to gain the necessary resources, skills, and/or abilities to operate an effective and compliant program. A consultant cannot be procured to operate or manage the program. A consultant can assist a CE's staff to develop strategies or skills to operate a successful and effective program.

### Food Service Management Company (FSMC)

An FSMC is a commercial enterprise or nonprofit organization that may be procured to assist the CE in managing and operating the program, i.e., to operate the program on behalf of the CE.

### Vended Meal Contractor Providing Services for an SNP

A contractor or merchandiser may be procured to provide the CE with complete meals, meal components, and raw materials for the meal service.

## Definitions for this Section

For this section, the following definitions will be useful:

<i>Acting on Behalf of CE</i>	Entity or person who has been given the responsibility to take action for the CE.
<i>Agent</i>	Person authorized to act for the CE through employment, by contract, or apparent authority.
<i>Arms-Length Transaction</i>	<p>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> <p>Less than Arms-Length Transaction</p> <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.</p>
<i>Bid Guarantee</i>	Guaranteed percentage 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 a contract is awarded and to the winning offeror as soon as the contract is signed.
<i>Bond</i>	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.
<i>Buy American</i>	<p>Requirement for schools to purchase, to the maximum extent practicable, domestic commodities and products.</p> <p>A domestic commodity or product means an agricultural commodity that is produced (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.</p>
<i>Capital Expenditures</i>	A direct cost expense for an item to be used for general purposes and intended to be used for multiple years <sup>1</sup> .

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<sup>1</sup> TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

<i>Code of Conduct</i>	<p>Set of written standards the CE must develop that outline the responsibilities of, or proper practices for, an individual or organization which govern the following:</p> <ol style="list-style-type: none"> <li>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)<sup>2</sup> program funds.</li> <li>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.</li> </ol>
<i>Conflict of Interest</i>	Any action that allows a person to benefit at the expense of the public interest or the expense of their employer.
<i>Contract</i>	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 compensations the contractor receives when products and/or services are provided.
<i>Consultant</i>	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.
<i>Cooperative Purchasing</i>	Group of CEs joining 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.
<i>Cost Analysis</i>	Review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.
<i>Cost Index</i>	Tool that is designed to show the impact of an economic measure on the price of purchasing a specific type of item.
<i>Cost Reimbursable Contract</i>	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 or without a fixed fee. 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.
<i>Debarment</i>	Action taken by a debarring official to exclude a person from participating in covered transactions. <sup>3</sup> A person so excluded is debarred, that is, unable to participate.
<i>Distributor</i>	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.
<i>Drop Delivery</i>	Delivery to one location within the CE, such as a central warehouse.

<sup>2</sup> FNS administers the nutrition assistance programs for USDA.

<sup>3</sup> Covered transactions in this section refer to transactions related to child nutrition programs.

<i>Economies of Scale</i>	Purchase of large quantities of a product and/or service in order to obtain a better price.
<i>Escalator/ De-escalator Clause or Market-based Pricing</i>	Predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.
<i>Ethics</i>	Moral standards individuals use to guide decisions in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.
<i>Firm Fixed Price Contract (Also Called Firm Price Contract)</i>	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.
<i>Fixed-Price</i>	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 Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home.
<i>Fixed Price (Fee)</i>	Agreed upon amount of money that is fixed at the inception of the contract.
<i>Food Service Management Company (FSMC)</i>	Any organization, whether commercial enterprise or a nonprofit organization, that is or may be contracted by the CE to operate or manage any aspect of the school food service. <sup>4</sup>
<i>Food Service Management Company (FSMC) Solicitation/Contract</i>	TDA term used to <u>reference the TDA prototype combined solicitation and contract</u> . This term is applicable to this section only.
<i>Forecasting</i>	Process of analyzing current and historical data to determine future procurement trends. 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 plans to evolve each fiscal year.
<i>Full and Open Competition</i>	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.

<sup>4</sup> 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.

<i>Group Buying Service (GBS)</i>	Organization that buys on behalf of other entities in larger quantities. Other names for group buying services (GBSs) include purchasing cooperatives, purchasing consortia, and group buying/purchasing organizations. A GBS can be for-profit or nonprofit. It is vital that all procurement transactions done by the GBS be conducted in a manner providing full and open competition.
<i>Incentives</i>	Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.
<i>Invitation for Bid (IFB)</i>	Formal method of procurement that uses sealed bidding and results in a fixed price contract with or without adjustment factors.
<i>Local Product</i>	Unprocessed locally grown or raised agricultural products that retain their inherent character.
<i>Managing the Contract</i>	Procedures the CE has in place to ensure that contractors perform in accordance with the terms, conditions, and specifications and/or technical requirements of their contracts or purchase orders.
<i>Material Change</i>	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.
<i>Meal Equivalency Factor (MEF)</i>	a 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.
<i>Non-Federal Entity</i>	State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
<i>Pass Through Entity</i>	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 for a federally funded program.
<i>Payment Bond</i>	Bond which covers the cost of materials and works for construction contracts.
<i>Performance Bond</i>	Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract
<i>Procurement</i>	Act of obtaining 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.]
<i>Reasonable Cost</i>	Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.
<i>Regulatory Authority</i>	Oversight authority dictated by legislative act or regulation.
<i>Request for Proposals (RFP)</i>	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed price or cost reimbursable type contract.
<i>Responsible</i>	Capable of providing the product(s) and/or service(s) as described in the solicitation.

<i>Responsive</i>	Offer that addresses terms and conditions of the solicitation including the specifications and/or technical requirements for product(s) and/or service(s).
<i>Service Fee</i>	Fee charged for the performance of a specific service.
<i>Solicitation</i>	Process of notifying prospective or qualified offerors about the specifications or technical requirements for 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.
<i>Solicitation/ Contract</i>	Term used in Texas for the prototype solicitation and contract that CEs are required to use.
<i>Specifications and Technical Requirements</i>	Detailed information included in the solicitation and in the final contract that describe the product(s) and/or service(s) that will be provided to the CE under the contract.
<i>Subgrantees</i>	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
<i>Supplier (Sometimes Called Vendor)</i>	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.
<i>Third Party</i>	Entity that is contracted to act on behalf of another entity.
<i>Transaction</i>	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.
<i>Unallowable Cost or Expense</i>	Cost or expense which cannot be paid using school nutrition program funds. This includes costs and expenses incurred by the CE as well as any third party acting on behalf of the CE. Disallowed is sometimes used in place of unallowable.
<i>Value</i>	Something of monetary or material worth or something that has usefulness that can be exchanged for something of worth, merit, or importance.
<i>Vended Meal Contract</i>	Contractor or merchandiser providing the CE with complete meals, meal components, and raw materials for the meal service.
<i>Vendor Participation Fees</i>	Charge to participate which is paid by the participant or by those providing products and/or services.

## Consultant Contracts

CEs may use a consultant as a short-term<sup>5</sup> strategy to support the CE in areas where the CE lacks the necessary resources, skills, and abilities to manage and operate the program effectively and in compliance with all regulations. Before procuring a contract for a consultant, the CE should also consider if its regional education service center (ESC) can provide technical assistance at no cost to the CE.

## Roles for a Consultant in a School Nutrition Program (SNP)

Consultant contracts may be used as described in the following circumstances:

### Regulatory Change

When there is a lack of resources, skills, or abilities to perform a required service or action, including, but not limited to, when there is regulatory change that the CE is not prepared to implement, the CE may procure a consultant to gain access to resources and develop staff skills and abilities to achieve or maintain compliance.

### Implementation Support

Where the services provided are not of a continuing nature, the CE may procure the services of a consultant for a limited period of time while the CE builds staff capacity or develops a plan for implementation.

### Most Cost Effective Strategy

When tasks to be performed can be accomplished in a short period of time and the services can be provided more economically by a short-term consultant instead of a direct hire, the CE may procure a consultant. Cost effective in this case means a lower cost to the CE.

### Operational and Management Tasks

A consultant role is not to perform operational or management tasks. It is to support the CE's staff in performing operational and management tasks. When a consultant assumes operational and management roles, it has become an FSMC.

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<sup>5</sup> In general, a consultant's contract should last no more than a year. In some cases, it is acceptable to extend the contract as the staff move into implementing what they have learned from the consultant. The consultant role takes the form of an advisor helping staff process and assess implementation actions.

### **Long-Term Contract**

The role of the consultant is intended to be a short-term role. If a CE has procured a consultant or a series of consultants to address long-term issues, the CE is not using consultant services as allowed. Instead, the CE is using a consultant in an FSMC capacity and, therefore, must procure an FSMC if the CE is not ready or chooses not to transfer these responsibilities to its own staff.

If the activities in this contract include duties or actions that are considered to be program operation or management tasks, the CE must reevaluate its consultant's solicitation and contract and either remove those duties or reissue a solicitation for an FSMC contract.

### **Consultant Contract, Responsibility for Program Compliance**

The CE cannot delegate its responsibility to operate and manage the program in compliance with all applicable federal, state, and local regulations. The CE is also responsible for ensuring that the activities described in a consultant's contract are appropriate for this type of contract, that is, the activities do not involve program management.

### **Procuring a Consultant Contract**

A CE must procure a consultant's contract appropriately as described in *Administrator's Reference Manual, Section 17, Procurement*. In the solicitation and contract, the CE should include the following information and requirements at a minimum:

#### **Scope of Work**

- Statement of the objectives to be achieved with measurable indicators of when the objectives have been met and progress milestones
- Qualifications or technical specifications necessary to provide the services needed under the contract
- Explanation of the types of issues the consultant is expected to address

#### **Financial Elements**

- Explanation that the offer to be submitted is for a set price,<sup>6</sup> i.e., the offer must include a statement for the total costs for the contract
- Process for submitting invoices and receiving payment

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<sup>6</sup> A consultant's contract cannot be awarded to an offeror that has submitted a cost plus percentage or cost plus added expenses. All costs to be charged for the contract must be included in the offer.

## **Terms and Conditions**

- Process for addressing conflicts in the contract
- Statement of the expected timeline for the contract duration
- Terms and conditions for terminating the contract

As a best practice, CE's may consider a provision stating that any silence, absence or omission from the contract specifications concerning any point must be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the CE is to be used. This provision should be contained in both the IFB/RFP and the contract.

## **FSMC Contract**

CEs may use an FSMC to manage and operate the food service program or specific elements of the food service program on behalf of the CE.<sup>7</sup> An FSMC may be a commercial enterprise or a nonprofit organization.

## **Scope of Work for an FSMC**

FSMC contracts include, but are not limited to, some or all of the following tasks:

### **Eligibility Determination/Verification**

- Student eligibility determinations
- Eligibility verification process
- Retention of required records

### **Meal Planning, Preparation, and Service**

- Menu development
- Preparation of meals
- Service of meals
- Maintain food production records
- Health and safety requirements
- Receipt and use of USDA Foods, including maintaining all required records
- Inventory management

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<sup>7</sup> 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.

### **Counting and Claiming Data**

- Operate the point of service (POS) system
- Collect and report data for meals served
- Maintain and provide counting and claiming data to CE

### **Procurement on Behalf<sup>8</sup> of CE**

- Procure necessary food and supplies
- Assist CE in procurement of USDA Foods processing
- Maintain records on procurement, including, but not limited to, all documentation related to credits, discounts, and rebates and credit for USDA Foods values

An FSMC contract may be a short-term or long-term method of managing or operating the program; the contract may be awarded for a period of up to one year and may be renewed for four additional periods of up to one year before a new solicitation is required. An FSMC contract may only be renewed if the specifications, technical requirements, and terms and conditions of the original contract are still in place.

The FSMC contract may also stipulate that the assigned tasks for the FSMC are different for different child nutrition programs.

### **Responsibility for Program Compliance, FSMC Contracts**

The CE cannot delegate its responsibility to operate and manage the program in compliance with all applicable federal, state, and local regulations. It is the responsibility of the CE to monitor the FSMC contract and ensure that all regulatory requirements are met.

### **Issues to Consider for FSMCs**

Whether a CE is considering the use of an FSMC for the first time or evaluating its current use of an FSMC, the CE should consider the following issues:

1. What method of providing food service best meets the CE's goals and objectives?
  - What are the goals for the program?
    - Customer service?
    - Educational activities such as nutrition lessons, school gardens, or farm to school activities?
    - Financial?

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<sup>8</sup> These requirements are commonly referred to as *pass through entity* requirements.

- Local wellness policy activities?
  - Nutrition?
  - What the measurable objectives for meeting each goal?
  - What are the financial considerations for program operations?
  - What other elements of program operation are important to the CE?
2. What type of services does the food nutrition program provide?
- How many reimbursable meals—lunch, breakfast, snack, and summer—are served each year?
  - What is the average daily participation (ADP) by site?
  - What other meal service activities does the CE provide?
    - Catering?
    - Special events?
    - Fundraisers?
    - Other Activities?
3. What is the current cost of operating the food service program and income for the program?<sup>9</sup>

*Income*

- What is the reimbursement the CE receives by program operated—lunch, breakfast, snack, and summer—and in total?
- What income does the CE receive for other food service program activities?
- What income does the CE receive for credits, discounts, and rebates and credits for USDA Foods values?

*Costs*

- What are the costs incurred for operating the program?
  - Food
  - Labor
  - Supplies
  - Equipment
  - Indirect costs
  - Employee benefits
  - Storage of USDA Foods
  - Processing of USDA Foods
  - Other items?

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<sup>9</sup> The annual Financial Report submitted to TDA will provide some financial information, but the CE should work with the CE's financial manager to explore income and costs more thoroughly. TDA also provides the *Budget Tool* at [www.squaremeals.org](http://www.squaremeals.org) which will help the CE collect the data needed to conduct a full financial analysis of the school nutrition program.

4. What are the reasons the CE is considering changing to FSMC operation?

- Cost?
- Staffing challenges?
- Operating challenges?
- Other issues?

5. What elements of program operation does the CE feel an FSMC can manage more effectively than the CE?

- Eligibility determination?
- General program management?
- Meal Service?
- Menu planning?
- Procurement?
- Staffing?

6. Other than meal program operational changes, are there other impacts if the CE changes to FSMC operation?

- Employees losing positions?
- Other school groups or organizations that are served by the SNP?

CEs may get additional assistance from their regional education service center (ESC) child nutrition specialist and may also find contacting other CEs of similar

size to learn about their experiences with self-operation and/or FSMC operation helpful.

#### 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/](http://www.comptroller.texas.gov/)

Resources include the *Model Purchasing Manual for Texas Cities and Counties 2010* which includes 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](http://www.texasahead.org/lga/finances/purchasing/96-449_Model_Purchasing_Manual_11_10.pdf)

###### *Texas Education Agency (TEA)*

*Financial Accountability System Resource Guide* provides detailed guidance of financial accountability, including Module 3, Purchasing, for local education agencies and charter schools. Available at [www.tea.texas.gov/Finance\\_and\\_Grants/Financial\\_Accountability/Financial\\_Accountability\\_System\\_Resource\\_Guide/](http://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](http://www.fns.usda.gov/es/node/73141)

## Procuring an FSMC Contract

FSCM contracts must be procured appropriately. *Administrator's Reference Manual, Section 17, Procurement* provides additional guidance on the procurement process that should be used with the guidance in this section. In this section, the term solicitation/contract is used to reference the TDA prototype combined solicitation and contract.

- An FSMC contract must be fixed price or cost reimbursable. Cost-plus-a-percentage-of-cost and cost-plus-a-percentage-of-income FSMC contracts are prohibited.

- Fee increases are not allowable unless indicated in the solicitation/contract.
- Full and open competition must be maintained in all procurement actions.
- Any information regarding potential fee increases must be available to all potential offerors at the outset of the procurement action through the final contract award.

### **Required Use of FSMC Solicitation/Contract Prototype**

CEs must use the TDA prototype to procure an FSMC. USDA strongly recommends that CEs obtain legal counsel in the development of solicitations and contracts when procuring an FSMC.

#### *Approval Process*

The CE must take the following actions before releasing its FSMC solicitation/contract:

1. Notify TDA of the CE's intent to contract with a FSMC.  
*TDA will provide information the CE will need to complete the process.*
2. Use the TDA prototype solicitation/contract.<sup>10</sup>  
*FSMC-developed contracts and amendments are not allowed.*
3. Submit the prepared solicitation/contract to TDA for approval at least two weeks prior to the first advertising date.  
*All proposed solicitation/contracts must be submitted to TDA before February 15.*

#### *Approval for a Renewal*

4. Submit appropriate documentation to TDA for approval of the contract renewal prior to the April 30 deadline:  
*An FSMC contract may be renewed up to four times. However, if there is a material change<sup>11</sup> to the contract, the contract must be rebid.*

The CE's FSMC contract and/or renewal packet must be approved, in writing, by TDA before the start of the contract year. The CE cannot claim reimbursement for meals served under FSMC operation if (1) the FSMC contract or renewal has not been approved by TDA and (2) a signed copy of the FSMC contract has not been submitted to TDA.

While the procurement process for FSMCs must adhere to the procurement requirements described in *Administrator's Reference Manual, Section 17, Procurement*, there is additional guidance that is specific to the procurement of an FSMC contract.

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<sup>10</sup> Available at [www.squaremeals.org](http://www.squaremeals.org).

<sup>11</sup> See *Administrator's Reference Manual, Section 17, Procurement* for additional guidance on material change.

### **FSMC Contract Cost Analysis**

Before issuing a solicitation for an FSMC contract, a CE must conduct a cost analysis in order to establish an expectation of the cost. Price analysis may be accomplished in various ways, including the review of the CE's income and costs over a period of time, market prices, and similar contracts.<sup>12</sup>

Whatever type of contract cost analysis is used, the CE must have sufficient information upon which to project the total anticipated cost of the contract. Since fee adjustments may not be permitted, unless provided for in the original solicitation and contract through the use of the Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home, any change in fees or basis for fee increases not reflected in the original solicitation and contract would constitute a substantive or material change to the contract which would require that the contract be rebid.

### **FSMC Contract Cost, Fresh Fruit and Vegetable Program (FFVP)**

Administrative costs for the FFVP must not exceed 10 percent of the overall grant. When a CE includes the FFVP in an FSMC contract, the CE must insure that this financial requirement is met.

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<sup>12</sup> The annual *Financial Report* submitted to TDA will provide some financial information, but the CE should work with the CE's financial manager to explore income and costs more thoroughly. TDA also provides the Budget Tool at [www.squaremeals.org](http://www.squaremeals.org) which will help the CE collect the data needed to conduct a full financial analysis of the school nutrition program.

In Texas, CEs may use one of two methods of procurement: (1) invitation for bids (IFB) or competitive sealed bid method or (2) request for proposals (RFP) or competitive proposal.

<b>FSMC Procurement Method</b>	
<b>Invitation for Bids (IFB)</b> <i>(Also called competitive sealed bid)</i>	<b>Request for Proposals (RFP)</b> <i>(Also called competitive proposal)</i>
<b>Pricing</b>	
<ul style="list-style-type: none"> <li>– Contract must be fixed-price.</li> </ul>	<ul style="list-style-type: none"> <li>– Contract may be fixed price or cost reimbursable.</li> </ul>
<b>Method Design</b>	
<ul style="list-style-type: none"> <li>– <i>Expectations</i>—Scope of work and specifications and/or technical requirements are well defined and measurable.</li> <li>– <i>Evaluation</i>—The solicitation/contract must indicate the method by which the offeror demonstrates that it has met the specifications and/or technical requirements.</li> <li>– <i>Offers</i>—Offers must be publicly opened and the process for opening offers must be described in the solicitation/contract.</li> <li>– <i>Contract Award</i>—Contract is awarded to the responsive/responsible offeror that submits the lowest responsive offer.</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Expectations and Evaluation</i>—Scope of work and specifications and/or technical requirements are clearly defined, but the CE has scoring criteria for factors in addition to price.</li> <li>– <i>Contract Award</i>—Contract is awarded to the most responsive/responsible offeror. However, price must be the primary consideration in awarding a contract.</li> <li>– <i>Offers</i>—Offers do not have to be publicly opened, but the process for opening offers must be described in the solicitation/contract.</li> </ul>

FSMC Procurement Method	
Invitation for Bids (IFB) <i>(Also called competitive sealed bid)</i>	Request for Proposals (RFP) <i>(Also called competitive proposal)</i>
<i>Questions to Consider</i>	
<ul style="list-style-type: none"> <li>– <i>Scope of Work</i>—Is the CE able to clearly define or describe the programs to be operated, products and services the FSMC will provide, assigned responsibilities for the FSMC and CE, and costs the FSMC will cover?</li> <li>– <i>Competition</i>—Are there multiple entities or companies that are able to make an offer?</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Technical Skills</i>—Does the CE possess the technical skills necessary to develop the written evaluation and scoring criteria, complete a review of the responses received to evaluate, and score the proposals as specified in the solicitation, and negotiate with offerors? <ul style="list-style-type: none"> <li>• Strong knowledge of procurement and experience with contract negotiation</li> <li>• Knowledge of Child Nutrition Program (CNP) regulations, including allowable and unallowable cost provisions?</li> <li>• School food service administration and operation management?</li> <li>• Financial management of a nonprofit food service account?</li> </ul> </li> <li>– <i>Evaluation and Scoring Criteria</i>—Does the CE have a process in place to document communication about the evaluation and scoring criteria in the solicitation/contract, pre-determined cut-off score for responsive offers, evaluation, and award of the contract?</li> </ul>

FSMC Procurement Method	
Invitation for Bids (IFB) (Also called competitive sealed bid)	Request for Proposals (RFP) (Also called competitive proposal)
<b>Advantages</b>	
<ul style="list-style-type: none"> <li>– <i>Revenue and Cost</i>—A CE is able to more accurately estimate program revenue and contract costs.</li> <li>– <i>Billing and Payments</i>—Since the FSMC does not pass individual costs for goods and services to the CE, payment transactions are limited to the monthly contract fee.</li> <li>– <i>Simplified Monitoring</i>—The CE must conduct onsite monitoring for compliance, but there are fewer areas to be monitored: 21-day cycle menu and meal pattern, health and safety regulations, program operation, credit for the value of USDA Foods, and status of the nonprofit food service account for revenues and expenses.</li> <li>– <i>Economic Cost Adjustment</i>—Changes in contract costs may be tied to the Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home. If cost adjustments are tied to the CPI, market price variability will not significantly impact the cost of the contract.</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Responsibilities</i>—The CE has control of the weight or score for each of the evaluation criteria, so the evaluation criteria can be used to ensure that the elements in the offer related to the key FSMC responsibilities are emphasized.</li> <li>– <i>Pricing</i>—Cost-reimbursable contracts allow the CE to take advantage of lower costs during periods of falling prices.</li> </ul>

FSMC Procurement Method	
Invitation for Bids (IFB) (Also called competitive sealed bid)	Request for Proposals (RFP) (Also called competitive proposal)
<i>Disadvantages</i>	
<ul style="list-style-type: none"> <li>– <i>Precise Descriptions</i>—Because the FSMC is submitting an offer for the scope of work and specifications and/or technical requirements provided in the solicitation/contract, a poorly written solicitation/contract will result in a contract that does not meet the needs of the CE.</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Monitoring Costs</i>—Monitoring costs may be higher because of number of areas that must be monitored, 21-day cycle menu and meal pattern, health and safety regulations, advisory board, record keeping, allowable costs, Buy American provision, third party procurement, USDA Foods values, and credits, discounts, and rebates for other purchases.</li> <li>– <i>Unbudgeted Costs</i>—Cost-reimbursable contracts may result in higher costs during periods of rising prices or volatile market prices.</li> <li>– <i>Essential Skill and Experience</i>—If CE staff do not have sufficient knowledge, skill, and experience in procurement, allowable cost provisions, negotiation, program operations, and financial management, it may be necessary for the CE to hire experts to finalize the terms and conditions of the contract. Attempting to negotiate the final terms and conditions without the needed expertise may result in the CE entering into a fully enforceable contract that fails to meet regulatory requirements. Moreover, because an administrative review or other audit may result in fiscal action for noncompliance, staff that lack knowledge, skill, and experience may not ensure that responsibilities are assigned in a way that limits the financial burden on the CE.</li> <li>– <i>Poorly Defined Responsibilities</i>—If the solicitation/contract does not fully and clearly define FSMC responsibilities, the CE may incur additional costs for goods or services that were not budgeted in the FSMC contract.</li> <li>– <i>Final Terms and Conditions</i>—CEs must insure that in establishing the final terms and conditions they maintain scope of work and specifications and/or technical requirements communicated in the original solicitation/contract.</li> </ul>

### Advertising for FSMC Contracts

A CE must provide a sufficient number of postings to ensure that there is broad distribution of the advertising announcement and allow sufficient time for offerors to respond to the solicitation/contract.<sup>13</sup> While there is no required amount of time for these activities in USDA guidance,<sup>14</sup> CEs must ensure that they advertise to the widest possible audience across a period of time that is sufficient for offerors to create and submit their offer.

<i>Timing of Advertisement</i>	<p>As a general rule, the CE should issue the advertisement at least twice. Because of the complex nature of FSMC solicitations, releasing the advertisement at least 45-60 days before the offer due date will allow the contractor sufficient time to review, develop, and submit a response. However, if a pre-bid meeting is planned, the CE will also need to allow additional time for the meeting and for providing information from the pre-bid meeting with all participants.<sup>15</sup></p> <p><i>[NOTE: If the CE receives a small number of offers, the CE should review the timing of its release to ensure that the timeline was sufficient for offerors to respond to the solicitation.]</i></p>
<i>Content of Advertisement</i>	<p>Advertising must include how the potential offeror may obtain the complete solicitation, method for submitting an offer, information concerning a pre-bid meeting (if applicable), time and place for opening offers, summary of evaluation criteria, and processes for awarding the contract.</p>
<i>Additional Required Notification for FSMC Contracts</i>	<p>CEs must distribute the FSMC solicitation/contract to the vendors listed on TDA's <i>Food Service Management Company Approved Vendor List</i>.</p>

<sup>13</sup> See *Administrator's Reference Manual, Section 17, Procurement* for additional guidance on advertising.

<sup>14</sup> The Texas Education Agency (TEA) also has procurement guidance that may apply. As long as TEA guidance is not in conflict with USDA guidance, CEs may use that guidance.

<sup>15</sup> See the *Pre-Bid Meetings IFB/RFP* subtopic in the *Special Guidance for FSMC Contracts* subsection in this section for additional guidance.

## Elements to Be Included in the FSMC Solicitation/Contract Scope of Work, and Specifications and/or Technical Requirements

<p><i>Certifications</i> 16</p>	<p>The contract must include certification statements that the FSMC will comply with the following requirements:</p> <ul style="list-style-type: none"> <li>– Suspension and debarment method and appropriate documentation</li> <li>– Lobbying</li> <li>– Non-collusion or certification of independent price determination<sup>17</sup></li> <li>– Civil rights compliance<sup>18</sup></li> </ul> <p>CEs may also add a provision stating that any silence, absence, or omission from the contract specifications concerning any point will be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the CE is to be used. This provision should be contained in both the solicitation and the contract.</p>
<p><i>Competitive Food Nutrition Standards</i></p>	<p>Description of the FSMC and CE responsibilities for compliance with the Competitive Food Nutrition Standards and the retention of related documentation that demonstrates that the CE is in compliance with all regulations.</p>
<p><i>Contract Duration</i></p>	<p>Statement that the contract is one year contract, July 1 to June 30. The CE may add that an FSMC contract may be renewed for an additional four times, i.e., four additional one year contracts.</p>
<p><i>Facilities Management</i></p>	<p>Description of the expectations for managing facilities, including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>– Cleaning</li> <li>– Extermination or pest control</li> <li>– Maintenance of meal preparation and service areas</li> <li>– Repairs</li> <li>– Trash removal</li> <li>– Other as appropriate</li> </ul>

<sup>16</sup> See *Administrator's Reference Manual, Section 17, Procurement* for additional information on acceptable method to meet certification requirements.

<sup>17</sup> See the Texas Education Agency (TEA) website to obtain a copy of TEA's financial manual and the forms TEA provides for this purpose. CEs may use applicable TEA forms that accomplish the USDA requirement.

<sup>18</sup> See *Administrator's Reference Manual, Section 19, Other Operational Issues* for additional information on requirements related to civil rights.

## Elements to Be Included in the FSMC Solicitation/Contract Scope of Work, and Specifications and/or Technical Requirements

<p><i>Financial, Allowable Costs</i><sup>19</sup></p>	<p>Statement describing the methods to identify allowable and unallowable costs— The FSMC must use one of the following methods:</p> <ol style="list-style-type: none"> <li>1. Identify each cost submitted for payment and indicate whether each cost is allowable or unallowable</li> <li><i>or</i></li> <li>2. Exclude all unallowable costs from billing documents <u>and</u> certify that only allowable costs are submitted for payment.</li> </ol> <p>The FSMC must maintain records that demonstrate compliance with this requirement and must make these records available to the CE for verification of allowable and unallowable cost identification.<sup>20</sup> However, in all cases, it is the CE’s responsibility to ensure the FSMC bills the CE for allowable expenses only.</p> <p>If the CE has an FFVP grant, the solicitation/contract must state that the administrative costs for operating an FFNP cannot exceed 10 percent of the overall grant. The FSMC must maintain records that demonstrate compliance with this requirement and must make these records available to the CE for verification of allowable and unallowable cost identification.</p>
<p><i>Financial, Food Service Account</i></p>	<p>Statement that all revenues and profits must be retained exclusively by the nonprofit food service account and that the FSMC must provide all necessary documentation to the CE to demonstrate compliance with all regulations.</p>

<sup>19</sup> There are two common types of accounting and billing systems that a CE May use: (1) cash basis, billing for goods and services at the time of purchase and (2) accrual basis, billing when the goods and services are actually used. The accrual basis of accounting is the preferred method because it measures the benefits received from purchases. Cash basis billing can distort this measurement by generating overstated expenses and an understated account balance at the time of purchase, and the reverse situation at other times. The CE can correct such distortions only by making adjustment entries. If the FSMC does not use the purchased goods at the same rate from month to month, the CE must recalculate the adjustment entry each month.

<sup>20</sup> For additional information on this requirement, see USDA’s *Contracting with Food Service Management Companies: Guidance for School Food Authorities*.

## Elements to Be Included in the FSMC Solicitation/Contract Scope of Work, and Specifications and/or Technical Requirements

<i>Financial, Method of Invoicing</i>	<p>Specific directions on the method for the following actions:</p> <ul style="list-style-type: none"> <li>– Methods for the FSMC to submit invoices</li> <li>– Information on payment processes</li> <li>– Required documentation to support invoices and payments</li> <li>– Requirements related to credits, discounts, and rebates and USDA Foods values as well as necessary documentation to demonstrate compliance with these payments</li> <li>– Frequency payments after invoices are received—monthly, prorated monthly, or other frequency</li> </ul>
<i>Financial, Method of Payment</i>	<p>Explanation of the fee structure and documentation required to (1) demonstrate accuracy of all transactions and compliance with all applicable regulations and (2) description of type of payment method to be used: service fee, management fee, administrative fee, or a combination of any of these methods. The fee may be structured in a variety of ways.</p> <ul style="list-style-type: none"> <li>– A cost-plus-fixed-fee contract may have multiple fees provided that the fees are specified and defined.</li> <li>– There may be a per-meal cost and an annual fee.</li> <li>– One fee might be called an administrative fee which typically refers to overhead costs, and another may be called a management or service fee which typically represents the profits.</li> </ul> <p>The fee must be expressed as a dollar value unit per meal and/or an annual cost for administrative or management services.</p>
<i>Financial, Procurement Practices and Preferences</i>	<p>Description of the CE's expectations for how procurement will be handled by the CE and the FSMC which includes the following information:</p> <ul style="list-style-type: none"> <li>– Types of foods to be purchased including menu item grade, purchase units, style, conditions, weight, ingredients, formulations, delivery time, and other related expectations</li> <li>– Requirements related to the processing of USDA Foods</li> <li>– Local preferences and expectations</li> <li>– Statement that the FSMC must provide documentation necessary to demonstrate compliance with all procurement regulations</li> </ul>

## Elements to Be Included in the FSMC Solicitation/Contract Scope of Work, and Specifications and/or Technical Requirements

<p><i>Financial, Program and Nonprogram Proportion</i></p>	<p>Description of requirements to provide adequate documentation to demonstrate compliance with the required proportion of nonprogram and program costs and income. Documentation must include the following:</p> <ul style="list-style-type: none"> <li>– Food cost of reimbursable meals, food cost from non-program foods, revenue from non-program foods and total revenue</li> <li>– Sufficient information for both the CE and TDA to determine compliance with the requirement</li> </ul> <p><i>[NOTE: This requirement applies to fixed-price and cost-reimbursable contracts.]</i></p>
<p><i>Financial, Roles and Responsibilities</i></p>	<p>Description of the role and responsibilities for both the CE and FSMC related to accounting and finances. These descriptions should be designed to ensure that the CE is able to monitor all transactions for accuracy. This includes, but is not limited to, statement that the CE be provided all documentation required to demonstrate compliance with all regulations.</p>
<p><i>Inventory Management</i></p>	<p>Description of the FSMC's and CE's responsibilities for managing the program's inventory of food (including USDA Foods) and supplies— This includes ensuring that all food is stored safely and the most cost effective use of USDA Foods.</p> <ul style="list-style-type: none"> <li>– Conducting onsite reviews</li> <li>– Counting and claiming</li> <li>– Food production records and other necessary documentation</li> <li>– Health and safety including any expectations for sample menu items to be refrigerated and tested in the event of an outbreak of food borne illness, if applicable<sup>21</sup></li> <li>– Management of ticket sales</li> <li>– Meal pattern requirements including, but not limited to, the 21 day menu cycle</li> <li>– Nonprogram food including a la carte, catering, vending, and special events services</li> <li>– Nutrition programs under contract</li> <li>– Oversight of program operations</li> <li>– Point of service system expectations</li> </ul>

<sup>21</sup> Retaining food samples for this purpose is an optional requirement. If adopted, (1) food samples are typically maintained for a 48-hour period, but may be kept for a longer period, and (2) requirements related to labeling, dating, and storage will need to be included.

## Elements to Be Included in the FSMC Solicitation/Contract Scope of Work, and Specifications and/or Technical Requirements

<i>Meal Preparation and Service</i>	Explanation of the FSMC and CE responsibilities for the preparation of meals and service of meals— This includes, but not limited to, meal production records, menu planning, use of USDA Foods, and meal pattern requirements.
<i>Onsite Monitoring</i>	Description of expectations for FSMC and CE related to onsite monitoring as required by regulation and as an element of program oversight— This includes conducting onsite monitoring and retention of all documentation related to onsite monitoring activities: forms, notices, corrective action, and other relevant documentation.
<i>Other Local, State, and Federal Regulations</i>	The solicitation/contract must include a requirement that the FSMC must be in compliance with all federal, state, and local regulations. <sup>22</sup>
<i>Professional Standards</i>	Explanation of requirements for compliance with professional standards for training and hiring of a director as well as maintaining documentation to demonstrate compliance.
<i>Records Retention</i>	<p>Description of the CE's expectation for the retention of documentation that demonstrates compliance with program operational and financial regulations — This description includes the method of record retention, location of retained records, and process for access to all records that demonstrate compliance with all federal, state, and local regulations.</p> <ul style="list-style-type: none"> <li>– Financial records include, but are not limited to, food and supply bid specifications, purchase orders, invoices, and personnel records that related to the provision of food services to a CE by program and by income type.</li> <li>– Records that demonstrate compliance with all requirements related to credits, rebates, and discounts and the value of USDA Foods</li> <li>– Records that demonstrate meal pattern compliance</li> <li>– Records that support the accuracy of reports</li> <li>– Other records as appropriate, including, but not limited to, costs related to the operation of FFVP</li> </ul> <p>The CE should require that all records be kept on the premises of the CE.</p>

<sup>22</sup> The list of applicable federal regulations is listed in *Administrator's Reference Manual, Section 17, Procurement*.

Protecting School Nutrition Funds	
<i>Bond Requirements</i>	Description of any type of bond(s) that the CE requires and time of submission, if applicable <sup>23</sup> —CEs <u>may</u> require payment bonds, performance bonds, and bid guarantees. See <i>Administrator's Reference Manual, Section 17 Procurement</i> for additional information on these types of bonds.
<i>Federal, State, and Local Regulations</i>	The solicitation/contract must include a requirement that the FSMC must be in compliance with all federal, state, and local regulations. <sup>24</sup>
<i>Financial Guarantees</i>	<p>Statement that stipulates financial guarantees for meeting fiscal goals as specified by the CE—Food service contracts <u>may</u> contain language which stipulates that the FSMC guarantees to meet fiscal goals specified by the CE. Any guaranteed return promised by the FSMC must remain in the nonprofit food service account.</p> <ul style="list-style-type: none"> <li>– If the contract contains such guarantees, the contract should also contain language that ensures that the FSMC bears responsibility for failure to meet those goals. Guaranteed fiscal goals or returns cannot be contingent upon multi-year contracts as FSMC contracts are for duration of one year with the option of up to four one-year renewals.</li> <li>– When an option for contract renewal is considered, the CE should specify in the original solicitation the CE's expectations of the guarantee for each renewal year option and if changes in the guarantee will be allowed.</li> </ul>
<i>Insurance</i>	Description of the CE's requirements related to insurance coverage—For insurance costs to be an allowable cost, they must be specified in both the solicitation and contract.

<sup>23</sup> For NSLP programs, requiring a bond is local decision. For NSLP CEs operating the Summer Food Service Program, a bid bond and performance bond are required as outlined in 7 CFR 225.15(m)(5-7).

<sup>24</sup> The list of applicable federal regulations is listed in *Administrator's Reference Manual, Section 17, Procurement*.

## Protecting School Nutrition Funds

<i>Loss Recovery</i>	<p>Statement of the CE's expectation for the FSMC's liability for financial losses—Contracts typically offer two options to address FSMC liability. The CE must include one of the following options in the solicitation/contract:</p> <ol style="list-style-type: none"><li>1. Reimburse the CE for the loss without limit</li><li><i>or</i></li><li>2. Reimburse the CE with limits equal to the management fee or a specified ceiling. Clauses for loss recovery liability should address the length of time the CE can seek recovery of losses. CEs should seek recovery of any losses for a period of time corresponding to the CE's period of liability.</li></ol> <p>Contracts should also address the length of time the CE can seek recovery of losses. A CE should seek recovery of any losses for a period of time corresponding to the CE's period of liability (contractual and legal period of liability).</p>
<i>Negligence</i>	<p>Statement that communicates liability for damage caused by negligence—CEs should exclude any contract term or waiver of liability statement for FSMC damage to equipment or facilities caused by negligence.</p>
<i>Recovery of Overclaims (Non Performance)</i>	<p>Provision that the FSMC pay the CE for any overclaims assessed by TDA due to FSMC negligence or noncompliance with regulations, including overclaims based on review or audit findings. This liability should correspond to either the five year record retention period for public and charter schools or three years for nonprofit private schools, other organizations, and residential child care institutions (RCCIs).</p>

## Prior Program Information

<p><i>Financial Information</i></p>	<p>Description of CE's prior revenues and operating expenses, and related information—This includes, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>– Total program income for the prior year.</li> <li>– Total program expenses for the prior year.</li> <li>– Prior and expected practice for subsidizing program operations with general funds.</li> <li>– Staffing requirements including number of employees, approval of child nutrition director, insurance requirements, management of staff, and responsibility for employee benefits.</li> </ul> <p><i>[NOTE: Contracts may have provisions against cross-hiring. Cross-hiring refers to the hiring of staff by one party to a contract when such employees are employed by the second party to the contract. Terms and conditions related to cross-hiring need to describe when an employee is no longer employed (retirement, resignation, or termination) and when an employee may cross-hire and how employee costs will be transferred from one party to the other party. Without such provisions, changes to contract provisions for handling personnel costs not included in the scope of the original solicitation and contract may represent a material change when the FSMC services are modified to include such changes. Cross-hiring provisions by either the CE or the FSMC should be reviewed by the CE's legal counsel to ensure compliance with federal, state, and local labor laws.]</i></p>
<p><i>General Information on Prior Operation</i></p>	<p>Information on general program operation, including, but not limited to, to the following:</p> <ul style="list-style-type: none"> <li>– Food preparation facilities (all sites prepare food versus one central kitchen)</li> <li>– Meal prices for students and adult meals</li> <li>– Meal service hours at each site</li> <li>– Methods of meal service (operator-served or buffet/self-service, salad bars, etc.)</li> <li>– Number of current employees, including status (full-time or part-time), salaries, and benefits, as applicable</li> <li>– Number of school food service sites including nutrition programs operated</li> <li>– Number of serving days, including a school calendar that includes holidays and no school days for students</li> <li>– Type and value of nonprogram foods and meals to be offered (catering or fundraising)</li> <li>– Current federal reimbursement rates</li> </ul>

Prior Program Information	
<i>Program Participant Demographics</i>	<p>Information on CE's demographics—Description of the demographics of school and program participants, including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>– Anticipated student growth or loss and/or additional or reduced service locations</li> <li>– Description of student age/grade for meal patterns required</li> <li>– Educational programs available that will also receive services (pre-kindergarten, half-day kindergarten, adult education centers, alternative schools, or technical programs)</li> <li>– Indication of number of students enrolled and the average daily participation (ADP)</li> </ul>
Contract Terms and Conditions	
<i>Conflict Resolution</i>	Description the CE's process for resolving contract conflicts
<i>Contract Duration</i>	<p>Statement that the contract is a one year contract and may be renewed for up to 4 additional one-year time periods as specified in the solicitation and contract.</p> <p><i>[NOTE: If contract renewal is not stated in the terms and conditions of the contract, the existing contract cannot be renewed.]</i></p>
<i>Logistics for the FSMC Contract Award</i>	<p>Description of key dates associated with awarding the FSMC contract, including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>– Approval process milestones for contract award</li> <li>– Dates offers will be opened, evaluated, negotiated, and awarded</li> <li>– Location if the offers are to be opened publicly</li> <li>– Pre-bid meeting, if applicable<sup>25</sup></li> </ul>
<i>Protests</i>	Explanation of the method the CE will use to address protests

<sup>25</sup> The CE cannot designate the offer due date less than two weeks after the pre-bid meeting.

## Contract Terms and Conditions

<i>Renewal, Cost Index</i>	Statement that describes if the CE will allow an adjustment to the contract fee/cost when a contract is renewed using the Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home to be used to adjust the cost of the contract during renewal years. If this option is used, the price of the contract must also decrease if the Yearly Percentage Change in the Consumer Price Index (CPI) for All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home indicates a decrease.
<i>Signatory Authority</i>	Description of the approval authority for this type of contract.
<i>Termination</i>	Explanation of the terms and conditions for terminating the contract <i>[NOTE: Regulations require that any contract in excess of \$10,000 must address termination for cause and convenience, including the manner by which it is effected and the basis for settlement. In addition to the provision of termination for cause, CEs may also want to include a termination for convenience provision that provides adequate advance notice that would permit the CE sufficient time to arrange alternate food service if the FSMC exercises this clause.]</i>

As a best practice, CE's may consider a provision stating that any silence, absence or omission from the contract specifications concerning any point must be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the CE is to be used. This provision should be contained in both the IFB/RFP and the contract.

## USDA Foods

<i>Management of USDA Foods</i>	<p>Descriptions of the CE's expectation of the FSMC for managing USDA Foods, including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>– Inventory of USDA Foods</li> <li>– Method of USDA Foods storage</li> <li>– Ordering USDA Foods in coordination with CE</li> <li>– Previous use of USDA Foods</li> <li>– Processing</li> <li>– Quantities/types of USDA Foods available, or ordered for the upcoming year</li> <li>– Utilization of USDA Foods</li> </ul>
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USDA Foods	
USDA Foods Values	<p>Description of the method and frequency of reporting USDA Foods values. This includes the following:</p> <ol style="list-style-type: none"> <li>1. Specified method for reporting and payments at an interval that allows the CE to track and verify that all values have been paid to the CE  <p><i>[NOTE: The FSMC must provide a report to the CE demonstrating all payments for USDA Foods values at the end of the year. However, a report at the end of the year may not allow the CE sufficient time to verify that all values have been paid accurately. TDA recommends that CEs require these reports at least quarterly if not monthly.]</i></p> </li> <li>2. Retention of all documentation related to credits, discounts, and rebates and USDA Foods values</li> <li>3. Providing documentation upon request to the CE, TDA, USDA, or other authorized agency</li> </ol> <p>The FSMC must report the credit for USDA Foods values on the billing invoice submitted to the CE for payment.</p>

### FSMC Offer Evaluation

A CE must use the evaluation criteria from the solicitation/contract to rank all offers before awarding the contract. Cost must be the primary consideration when awarding a contract.<sup>26</sup>

#### *Plan for Evaluating FSMC Offers*

To ensure that the procurement of an FSMC contract is a well-run and fair process, the CE should also develop a plan for evaluating offers as it develops the solicitation. While an IFB plan for evaluation will have fewer factors to consider, the CE should carefully plan the evaluation of the IFB offers as well as RFP offers. The plan for evaluating offers will include the following components:

##### *Offer Evaluation Team*

The CE needs to identify the evaluation team members and prepare them for the task.

- What staff members or other persons currently have the knowledge and expertise to evaluate the offers?

<sup>26</sup> See *Administrator's Reference Manual, Section 17, Procurement* for additional guidance on evaluation and cost as the primary consideration in awarding a contract.

- What kind of knowledge and expertise is needed to evaluate the specifications and technical requirements?
  - Who has that knowledge and expertise? Establish the standards for the evaluation/rubric tools? Create evaluation/rubric tools? To evaluate?
  - Do members of the team need additional information before beginning to evaluate the offers?
- How many members does the evaluation team need to both complete the work and ensure that there is a fair process?
  - How many offers does the CE expect to receive?
  - How long will it take a person to review the offer?
- Who has to approve the contract before it is formally awarded?
  - What actions need to be taken to get necessary approvals?
  - Who will take these actions?
  - Who will monitor the process to ensure that all approvals are obtained?
- How will the CE communicate the outcome of the solicitation to all offerors?
  - Who will develop the appropriate notification documentation? Sign the documentation? Send the notification documentation?

#### *Scoring Rubric or System*

Though price is the primary consideration in awarding all contracts, the scoring system is intended to ensure that the process for scoring each offer is fair and ensure that the most responsive and responsible offer is awarded the contract. The scoring system should include the following processes at a minimum:

- Develop standards that indicate responsive and responsible offers which are aligned to the solicitation specifications and technical requirements and other requirements as appropriate.
  - Responsible is defined as *capable of providing the product(s) and/or service(s) as described in the solicitation.*
  - Responsive is defined as *an offer that addresses all terms and conditions of the solicitation including the specifications and/or technical requirements for product(s) and/or service(s).*

- Develop the evaluation/rubric to be used to rank and assign weight for each standard the CE has set for a responsive and responsible offer.
- Develop a method to calculate the total points for each offer and a form for compiling the total points for all offers.
- Ensure fairness by having more than one evaluation team member complete the evaluation/rubric for each offer independently of all other evaluation team members and develop criteria for addressing differences in scores for the same offer among all evaluation team members such as taking two highest scores.
- Establish documentation that demonstrates the rank and weight for each standard for each offer, calculation of total points for each offer, and justification for determining the most responsive and responsible offer.

#### Information Box 2

##### Examples of Evaluation Criteria

The following criteria are commonly used in contract evaluation:

- Price/Cost (total cost of proposal submitted, must be the primary consideration)
- Management plan (demonstrates FSMC's plan and personnel for how services identified in the solicitation are proposed to be accomplished)
- Experience of FSMC, reference letters, etc. (includes total business experience as well as with CEs of similar size operating Child Nutrition Programs including references of these CEs)
- Financial Condition/stability, business practices
- Accounting and reporting systems
- Personnel management and professional standards plan
- Procurement-specifically the quality of the food to be purchased
- Promotion/Marketing in school food service

For an IFB, the list of items to be addressed in the scoring system will be finite and well defined. For an RFP, the list of items to be addressed in the scoring system may be finite and well defined or may allow a wide range of responses.

### *Responsible and Responsive*

A CE must award the contract to the most responsible/responsive offeror.

- Responsible is defined as *capable of providing the product(s) and/or service(s) as described in the solicitation.*

Responsible offerors possess the ability to perform successfully under the terms and conditions of a proposed procurement. In the evaluation criteria, the CE may give points for contractor integrity, compliance with public policy, record of past performances, and financial and technical resources.

- Responsive is defined as *an offer that addresses all terms and conditions of the solicitation including the specifications and/or technical requirements for product(s) and/or service(s).*

Responsive offers respond to the scope of work and each of the specifications and/or technical requirements as described in the solicitation/contract.

### *Overly Responsive Offer*

Giving consideration to overly responsive elements of the offeror's bid or response is prohibited. A contract award must be made by evaluating responses against the evaluation and scoring criteria stated in the solicitation/contract with price as the primary consideration.

#### **Information Box 3**

##### **Examples of Evaluation Criteria Point/Percentage System**

CEs may use an appropriate evaluation point system. The most commonly used options are to use points or to use a percentage.

Criteria	Amount to Be Awarded	
	Option to Use Points	Option to Use Percentage
– Price/Cost—Primary Consideration	25	20%
– Management Plan—FSMC's Plan for Accomplishing Goals Presented in Solicitation	20	15%
– Experience of FSMC—Total Business Experience, Experience with CEs of Similar Size, Experience Operating Child Nutrition Programs	10	5%
– Financial Condition/Stability, Business Practices	20	15%
– Accounting and Reporting Systems	20	15%
– Personnel Management and Professional Standards Plan	20	10%
– Quality of Food to Be Procured	15	10%
– Promotion/Marketing in School Food Service	10	5%
– Stakeholder Involvement—Students, Staff, and Others	10	5%
<b>Highest Possible Total</b>	<b>140 points</b>	<b>100%</b>

Consideration may be given to responses that add value to the program; however, it is the CE's responsibility to ensure that the item or service adds value to an element included in the solicitation/contract as opposed to being overly responsive.

*For Example: If the solicitation/contract does not include equipment yet the offer includes equipment, the added value is likely to be overly responsive.*

The CE must ensure that the value added responses do not include items or services that are unallowable. School food service funds must only be used for the operation or improvement of the food service program.

## **Special Guidance for FSMC Contracts**

CEs must use the following guidance in developing and implementing an FSMC contract:

### **Assistance in Preparing the Solicitation/Contract**

The CE must not

1. engage an individual, entity, business, or organization that will be submitting an offer or
2. use information that is prepared by any individual, entity, business, or organization that will be submitting an offer for the FSMC contract in the solicitation/contract.

If a CE awards the FSMC contract to an individual, entity, business, or organization that has provided information used in the solicitation/contract, the costs of the FSMC contract are not allowable and cannot be paid with funds from the school food service account.

However, a CE may survey prospective offerors to determine if there are individuals, entities, businesses, or organizations that are able to provide specific goods and services. In cases where CEs conduct a survey of potential offerors, the CE must take care to ensure that possible offerors do not provide assistance in preparing the solicitation/contract.

### **Additional Communication with Potential Offerors**

If information or documentation is provided to any potential offeror, it must be provided to all potential offerors. This includes, but is not limited to, the questions asked by any potential offeror and the answer provided to the question. CEs often find the easiest way to distribute the questions and answers is through a web-based format. In all cases, the CE must provide the location and method for accessing questions and answers or additional information in the solicitation.

## Conflict of Interest

CEs awarding an FSMC contract must avoid conflicts of interests. Conflicts of interest may occur in the following situations:<sup>27</sup>

- If an individual(s) responsible for determining bid/proposal responsiveness can be overruled by other individuals within the organization.  
*or*
- If the individual responsible for determining responsiveness (or any member of his or her family) has any personal or corporate ties or any financial interest in any of the offering firms  
*or*
- When gratuities, favors, or anything of monetary value is solicited or accepted and requires disciplinary action for violations.

When there is a conflict of interest, the CE must address the conflict as described in its written procurement procedures. The Texas Education Agency (TEA) also provides guidance on this issue specific to school districts and charter schools. CEs may use applicable forms developed by TEA to assist them in efforts to avoid conflict of interest.

When an FSMC assists a CE in the development of a solicitation to procure additional services and/or products, the FSMC, the FSMC's parent company, and any subsidiaries of the FSMC's parent company cannot submit an offer. It is a conflict of interest for the FSMC to have prior knowledge of the solicitation and input into any aspect of an offer that would be a part of the evaluation to award a contract.

## Contract Negotiation

A CE must not negotiate with any offeror at any time when an IFB method is used.

A CE must not enter into negotiations with an RFP offeror prior to the evaluation of offers. CE's cannot negotiate price, but they can use negotiation with responsive offerors that have different approaches to ask offerors to further explain a process or product that is included in the offer.

For an RFP, a CE may negotiate with the top responsible and responsive scorers who score above a specified score or percentage that was pre-determined before the evaluation of the offers began. See *Administrator's Reference Manual, Section 17, Procurement* for specific guidance on how negotiation may be used in contracts procured for school nutrition programs. The individuals evaluating the offers should not be the same individuals who conduct the negotiations.

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<sup>27</sup> See *Administrator's Reference Manual, Section 17, Procurement* for detailed information on the conflict of interest and the written procedures a CE must have in place to avoid conflicts of interest.

TDA recommends that the attorney for the CE take an active role in negotiations and contract review with the FSMC before the CE signs any contractual document.

## Material Change

Any change in a contract may result in a material change in the contract. If there is a material change to the contract, the CE must rebid the contract. See the *Administrator's Reference Manual, Section 17, Procurement* for detailed information on material change.

### *Changes Commonly Not Considered a Material Change*

Though every change should be considered individually, the following changes are commonly not considered to be a material change:

- The original contract included an anticipated change that was described as an option in the scope of work and/or specifications and/or technical requirements.
- Emergency situations when time does not permit conducting a formal competitive procurement and the current FSMC contractor has all the capabilities necessary to perform the new service. Emergency situations must be approved by TDA in advance and in writing. CEs, in approved emergency situations, are permitted to use noncompetitive negotiation as the means to procure the changes. After negotiating the price and terms, the CE would modify the contract to reflect the new services and charges.

### *Changes That Commonly Are Considered a Material Change*

Material changes<sup>28</sup> that require a new bid or separate contract include, but are not limited to, the following:

- Addition of new services to an existing contract that are not included in the current scope of work and/or specifications and/or technical requirements of contract

*For Example: Adding any of the following meal service options:  
catering, a la carte sales, vended meals, convenience  
stores, vending machines, and concessions*

- Addition of FSMC management for another program that is not included in the current scope of work and/or specifications and/or technical requirements of contract

*For Example: Adding another Child Nutrition Program (CNP) to the contract such as Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), or Seamless Summer Option (SSO)*

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<sup>28</sup> See the *Administrator's Reference Manual, Section 17, Procurement* for additional information on material change.

- Making changes in services within the scope of work or specifications and/or technical requirements of the original or current contract which alter the value, terms, or conditions of the original contract.

*For Example:*

- *Changes to the formula for determining meal equivalency*
- *Any change in fees or basis for fee increases not reflected in the original solicitation and contract*
- *Major shift in responsibilities for the CE's staff or FSMC staff*
- *Significant changes in the basis for determining guaranteed returns*
- *Change to or adding elements to the option to renew the contract*
- *Changes to the formula that is used to identify the meal.*
- *Changes that involve \$100,000 or more*

## **Opening Bids**

To ensure that all offerors are treated fairly and competition is not limited, CEs must follow the timeline and processes communicated in the solicitation and in the CE's written procurement procedures to open bids.

### *Opening Invitation for Bids (IFBs) Received*

- Each offer submitted for an IFB solicitation must be time-stamped and dated upon receipt. A CE must not open sealed offers (IFB) before the announced date or at a location other than the location publicized.
- Unsealed offers or offers received after the designated time and date cannot be accepted.
- The CE is not required to announce the winning offer at the opening, but the name of each offeror and the offer price must be read aloud and recorded as each offer is opened. Other information may also be read aloud for each offer: products included in offer, payment terms, delivery date, and such.
- In cases where the scope of work and specifications and/or technical requirements require additional evaluation to determine if the offer is responsive and/or responsible, the CE is not required to announce the winning offer at the time of the opening, but must state the offer price and if the offer appears to be responsible and responsive.

- In cases where the CE cannot announce the winning offer formally until the school board or other authority has approved the contract award, the winning offeror should be notified of the CE's intent to award the contract, but must be informed of the need for approval by the board or other authority and the timeframe for approval.
- Once the timeframe established by the CE for bid protests has passed (and settled, if applicable) and final approval is obtained, the CE should provide written notice to the successful offeror and include a statement that the CE has submitted the solicitation/contract to TDA for approval.
- Unsuccessful offerors should be notified promptly.<sup>29</sup>

### *Opening Requests for Proposal (RFP) Received*

A CE may open submitted responses from RFP offers to determine if all requested documentation is included with the offer or for clerical errors. If CEs chooses to do this, they should set a specific date for opening offers and set a specific date and method for sending notification for missing documentation or clerical errors.

All offerors must be given the same period of time to submit updated offers. Therefore, if the CE chooses to open the offers, it must return all offers lacking complete documentation or with clerical errors at the same time with the same amount of time for resubmission.

*For Example:*

- *March 1, 2016, 5:00 p.m.: Due date for all offers*
- *March 2-3, 2016: Period during which the CE will ensure that all offers have required documentation or if there are clerical errors*
- *March 4, 2016: Date on which notification is sent to all CEs missing documentation or with clerical errors*
- *March 9, 2016, 5:00 p.m.: Due date for all corrected offers*

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<sup>29</sup> The CE should contact their legal counsel to ensure compliance with all state procurement regulations regarding the intent to award and the protest period and to identify the CE's responsibilities regarding notification to unsuccessful offerors.

## **Pre-Bid Meetings IFB/RFP**

A CE may use a pre-bid meeting to (1) provide information concerning contract performance requirements (2) answer any questions prospective offerors may have regarding the solicitation. A pre-bid meeting cannot serve as a substitute for formally amending a deficient or ambiguous specification or to disseminate performance requirements in addition to those contained in the solicitation. CEs should consider the following issues in planning and conducting the pre-bid meeting:

### *Timing of Pre-Bid Meeting*

The pre-bid meeting should be held approximately 2 weeks after the release of the solicitation. In the solicitation, the CE should state that it will not accept offers until after the pre-bid meeting is held.

### *Information Regarding Meeting*

The CE is not required to put information about the pre-bid meeting in advertising, but the CE must include information regarding the meeting in the solicitation/ solicitation packet. The following strategies will help the CE in preparing for the meeting:

- Prepare an agenda.
- Request questions in advance so answers can be prepared.
- Assign specific roles to staff attending the meeting:
  - Monitor to ensure that everyone signs the attendance sheet
  - Timekeeper to ensure that the meeting agenda is followed
  - Note taker so information from the meeting can be accurately shared after the meeting
  - Other roles as appropriate

### *Offeror Attendance*

Attendance at the meeting by prospective offerors is strongly recommended but generally should not be required for submittal of an offer. However, a CE may add attending the pre-bid meeting as one of the evaluation criteria.

All offerors must be invited to the pre-bid conference. If more than one offeror responds to the public advertisement with an intention of submitting an offer, the CE must conduct a pre-bid conference for all interested offerors to attend at least two weeks after the date of the last public advertisement. If only one offeror responds to the public advertisement with intentions of submitting a proposal, then the CE may then conduct a walk-through of the facility instead of a pre-bid conference.

#### *Information Shared at the Pre-Bid Meeting*

The CE should tell all attending that the information shared in the meeting is not official until the information has been provided in writing to all potential offerors. All information shared in the meeting should be sent to all prospective offerors simultaneously to ensure that all possible offerors have the same information. See the *Additional Communication with Potential Offerors* subsection in this section for additional information on this topic.

*[NOTE: During the meeting questions may bring to light ambiguities, errors, or omissions in the IFB/RFP, which may later be corrected through written amendments to the IFB/RFP.]*

If the questions asked at the meeting cause the solicitation/contract to be updated. The CE must send the updated solicitation/contract to TDA to be approved.

#### *Documentation Related to the Pre-Bid Meeting*

The CE must retain documentation about the pre-bid meeting. Documentation includes, but is not limited to, sign-in sheet for all in attendance and a summary of all information shared, questions asked, and answers provided.

The CE must document the pre-bid meeting occurred by providing a sign-in sheet for all in attendance, a summary of all information shared, questions asked, and answers provided.

All information shared during the pre-bid meeting must be shared with all potential offerors using the method described in the solicitation. CEs may use an electronic method for sharing this information.

If there is an addendum to the solicitation, the addendum must be provided to all potential offerors. If more than one addendum is required, each addendum should be numbered, and a copy of each addendum should be signed and returned with the offer as additional supporting documentation of receipt of all requirements for consideration as a responsible and responsive offeror. CEs may use an electronic method for sharing an addendum.

#### *TDA's Food Service Management Company Approved Vendor List*

CEs may only contract with a FSMC vendor from *TDA's Food Service Management Company Approved Vendor List*. The solicitation/contract must also be distributed to all vendors on the vendor list.<sup>30</sup>

#### *USDA Foods*

To ensure that the FSMC does not include USDA Foods when computing the food costs billing, the CE must include controls in its cost-reimbursable contract for differentiating between USDA Foods and commercially purchased foods in the inventory records. Contract terms to help the CEs ensure that its food cost billings do not include charges for USDA Foods are included in the TDA RFP and Contract prototype. All USDA Foods received for the CE during the contract period must be accounted for; CEs may also require separate reporting by the FSMC of USDA Foods used during the billing cycle.

## **Awarding the Contract**

The FSMC contract must be awarded to the offeror that is the most responsive and responsible to the solicitation with price as the primary consideration.

### **Overly Responsive Offer**

Giving consideration to overly responsive elements of the offeror's bid or response is prohibited. A contract award must be made by evaluating responses against the evaluation and scoring criteria stated in the solicitation/contract with price as the primary consideration.

Consideration may be given to responses that add value to the program; however, it is the CE's responsibility to ensure that the item or service adds value to an element included in the solicitation/contract as opposed to being overly responsive.

*For Example: If the solicitation/contract does not include equipment yet the offer includes equipment, the added value is likely to be overly responsive.*

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<sup>30</sup> Available at [www.squaremeals.org](http://www.squaremeals.org).

The CE must ensure that the value added responses do not include items or services that are unallowable. School food service funds must only be used for the operation or improvement of the school food service program.

## **Invitation for Bid (IFB) Awards**

For an IFB, the contract is awarded to the offeror with the most responsive and responsible offer that has the best price. When determining if an offer is responsive and an offeror responsible, the CE will use the evaluation /rubric tool developed to ensure that the offer meets specifications and technical requirements and other provisions described in the solicitation.

## **Request for Proposals (RFP) Award**

For an RFP, the contract is awarded to the most responsive and responsible offer that is the most advantageous to the program with price as the primary consideration. CEs will make this determination by using the ranked and weighted criteria in the evaluation/rubric tool that has been developed by the CE.<sup>31</sup> Contractor integrity, compliance with public policy, record of past performance and financial and technical resources are valid factors in determining contractor responsibility. CEs must not change or by-pass the published evaluation and scoring criteria in order to circumvent full and open competition.

If oral presentations are a component of the RFP, great care must be taken to ensure the presentation is scored only for its content. Presentations must be ranked against measurable standards. The evaluation team members should be instructed to evaluate the substance of the presentation. Offerors must not be allowed to alter or amend their proposals through the presentation process.

## **FSMC Contract Management**

Even though the FSMC solicitation /contract will describe specific responsibilities for the FSMC, the CE still maintains overall responsibility for program operation and for specific actions as described in regulation. If a responsibility is not included in the solicitation/contract scope of work, the responsibility remains with the CE. If the FSMC assumes responsibilities not described in the original solicitation/contract, performing new responsibilities may be a material change and require the FSMC solicitation/contract to be rebid.<sup>32</sup>

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<sup>31</sup> See the *Plan for Evaluating Offers* subsection in this section for more information on this topic.

<sup>32</sup> See the *Administrator's Reference Manual, Section 17, Procurement* for additional information on material change.

# CE Responsibilities

## Accounting and Finances

The CE must ensure that all financial transactions are in compliance with requirements. This includes, but is not limited to, the following:

- Use of school food service funds only for allowable costs.
- All income accrues to the school food service account and that FSMC income reports include income broken down by source, type, and category of meal or food service
- Responsibility for the overall operation of food service programs, including financial requirements
  - Limiting administrative costs for the FFVP to 10 percent of the overall grant, if applicable
- Preparation of the solicitation and contract<sup>33</sup>
- Maintain responsibility for the accuracy of counting and claiming
- Maintain responsibility for the accuracy of bills and invoices, including credits, discounts, and rebates
- Application of USDA Foods values, if applicable
- Application of credits, discounts, and rebates.

## Administrative Review (AR) and Other Audits

The CE must maintain responsibility for the resolution of all Administrative Review (AR) or audit findings. While the FSMC will be involved in preparing and providing information for an AR or other audit, the CE is responsible for all responses for an AR or other audit. This includes, but is not limited to, to resolving findings from ARs and other audits.

## Advisory Board

The CE must ensure that an advisory board composed of parents, teachers, and students to assist in menu planning is established and maintained.

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<sup>33</sup> All CEs in Texas must use the prototypes from provided by the Texas Department of Agriculture (TDA). Available at [www.squaremeals.org](http://www.squaremeals.org).

## Agreements and Contracts

The CE must retain responsibility for all contractual agreements entered into in connection with the operation of the program. This includes, but is not limited to, the following:

- Signature authority on the permanent agreement with TDA and compliance with the permanent agreement
- Signature authority for the CE's *Policy Statement for Free and Reduced-Price Meals Attachment B: Meal Count/Collection Procedure(s)*
- Responsibility for processor agreements and contracts
- Oversight to ensure that all third party contracts are in compliance with all regulations

## Civil Rights

The CE must ensure that the FSMC complies with the procedures established by the CE for referring any civil rights complaints to the CE.<sup>34</sup>

## Competitive Foods

The CE must ensure that the FSMC is in compliance with Competitive Food Nutrition Standards (also called smart snacks) as described in *Administrator's Reference Manual, Section 20, Competitive Food Nutrition Standards*. This also includes FSMC reporting of non-program food and meal expenditures and revenue and the proportion of costs to revenues must also be reported by CEs. If the FSMC is to report this information on behalf of the CE, this must be specified in the original solicitation and contract.

## Eligibility Determination

Even if the FSMC conducts eligibility determinations on behalf of the CE, the CE is responsible to ensure that the following requirements are met:

- Accuracy of eligibility determinations and the verification process (with the exception of appeals as described below)
- All hearings related to eligibility determinations and verifications

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<sup>34</sup> See *Administrator's Reference Manual, Section 19, Other Operational Issues* for more information on the required actions when there is a civil rights complaint.

## Health and Safety

The CE must ensure that the FSMC maintains all applicable health and safety certifications and all health and safety regulations are met including, but not limited to, the following:

- Development and use of a Hazard Analysis Critical Control Point (HAACP) plan
- Compliance with all state and local health inspection regulations
- Safe and appropriate storage of all foods, commercial products

## Meal Service

The CE must retain control of the quality, extent, and general nature of food service for program and nonprogram foods and meals. This includes, but is not limited to, the following:

- 21-day cycle menu for the FSMC  
With TDA approval for a request for proposal (RFP) competitive bid, an FSMC may develop the 21-day cycle menu if the CE is not capable of developing a cycle menu.
- Meal pattern compliance
- Prices to be charged for meals
- Incorporation of USDA Foods into meals to the greatest extent possible,
- All meal service operational requirements are met including, but not limited to, offer versus serve (OVS).

## Monitoring

The CE must monitor the FSMC's operation of the program on a routine basis. This includes the onsite monitoring the counting and claiming system as well as monitoring the overall operation of the program. TDA has developed the *Food Service Management Company (FSMC) Monitoring Form*<sup>35</sup> for this purpose; however, the CE may use its own form as long as it includes all of the same information as the TDA form.

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<sup>35</sup> Available at [www.squaremeals.org](http://www.squaremeals.org).

*Onsite Monitoring*—CEs with more than one school must conduct an annual onsite review of each school prior to February 1<sup>st</sup> of each school year to observe the school's counting and claiming procedures. This includes any schools where an FSMC operates; CE staff must conduct the required onsite reviews. TDA provides forms for conducting this review at [www.squaremeals.org](http://www.squaremeals.org). If the review identifies a problem with a school's meal counting or claiming procedure, the CE must take the following actions:

- Implementation of corrective action
- Follow-up onsite reviews within 45 days of the review to determine if the corrective action resolved the problem(s).

*FSMC Monitoring*—CE must monitor the following areas of program operation:

- Competitive Food Nutritional Standards
- Documentation for meal service, including but not limited to, menus, standardized recipes, production records, reimbursable meal service
- Documentation supporting reporting
- Engagement of advisory committee
- Financial and accounting practices
- Health and sanitation
- Implementation of the CE's *Policy Statement for Free and Reduced-Price Meals Attachment B: Meal Count/Collection Procedure(s)*
- Menus, meal pattern, dietary specifications, and food service
- Nonprogram revenues and expenses
- Paid lunch equity calculations, if applicable
- Procurement
- Records retention
- Staffing
- Terms and conditions of the contract
- USDA Foods

### **Contract Renewal Documentation**

The CE must furnish TDA with the following documents for approval of the contract renewal prior to April 30:

1. Letter stating the intent of the CE to renew the contract with the FSMC for the upcoming school year
2. Copy of any amendments, subcontracts, letter agreements or any other relevant documentation pertaining to the contract
3. Copy of the previous year-end auditable foodservice budget
4. Copy of the upcoming year projected auditable budget
5. List of sites served
6. Actual methodology and calculations, together with an explanation for the method used to calculate changes in the contract costs, and the actual cost changes made

### **Reports**

The CE must ensure that reporting requirements are met.

### **USDA Foods**

- Must ensure that the FSMC credits the CE for the value of USDA Foods used as described in the solicitation and contract.<sup>36</sup>
- Must ensure compliance with USDA Foods usage, storage, and processing.
- Must monitor how effectively the FSMC is using USDA Foods.

## **FSMC Responsibilities**

### **Credits, Discounts, and Rebates and USDA Foods Values**

- Must provide credits, discounts, and rebates and USDA Foods values as described in the terms of the contract.
- Must maintain documentation of credits, discounts, and rebates and USDA Foods values.
- Must provide such documentation upon request to the CE, TDA, USDA, or other authorized agency.

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<sup>36</sup> See the *Administrator's Reference Manual, Section 21, USDA Foods* for additional information on this requirement.

## Operational Tasks

- Must operate the program as it is described in the solicitation/contract.
- Must ensure privacy for program participants.
- Must adhere to the cycle menu for the first 21 days and may make changes after the first 21 days with CE approval.

## Special Guidance, FSMCs

The following guidance will assist CEs in addressing special situations in FSMC contracts.

### Procuring or Purchasing on Behalf of the CE

When FSMC purchase on behalf of the CE, the following guidance must be used:

#### *Capital Expenses*

Purchases of equipment which exceed \$5,000 require prior approval from the CE and TDA.<sup>37</sup>

#### *Equipment Used in the Storage, Preparation, and Delivery of School Meals*

Contracts should describe the appropriate authorizations and forms required for TDA and the CE to approve the purchase of equipment to be used in the storage, preparation, and delivery of school meals.

#### *Ownership of FSMC Purchased Equipment*

When the FSMC is expected to invest in equipment on behalf of the CE, the original solicitation and contract must describe this provision. This includes, but is not limited to, the total amount of the investment over the total life of the contract or as prorated annually within a specified timeframe. Adding these provisions after the original solicitation and contract are awarded may create material changes that will require the solicitation to be re-bid.

If the contract expires or is terminated prior to the complete repayment of the investment, the CE must, on the expiration date or within five days after receipt by either party of any notice of termination under the contract, either (1) deliver the equipment items funded by the investment to the FSMC in full release of the unpaid balance or (2) retain the property and continue making payments in accordance with the amortization schedule as described in the solicitation and contract.

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<sup>37</sup> Use the capital expenditure form in TX-UNPS for this purpose.

## **Bankruptcy Procedures**

If the FSMC under contract to provide NSLP and/or SBP meals files for bankruptcy, the CE must contact TDA immediately to inform the agency of the bankruptcy. TDA will take the following actions:

- Review the bankruptcy documentation along with other issues that might have an impact on the FSMC ability to comply with contract terms as appropriate and
- Remove the FSMC from the FSMC vendor's list unless the FSMC is able to provide a required performance bond.

*[NOTE: CEs cannot impose any additional criteria or assurances (for example, bonds) on a FSMC regardless of a contract's value solely due to Chapter 11 status.]*

## **Vended Meal Contract**

CEs may use a vended meal contract to provide a CE with complete meals, meal components, or raw materials which are to be used for the meal service. A vended meal contractor cannot operate the program; it can only provide a service.

## **Appropriate Use of a Vended Meal Contract**

Vended meal contractors may be procured to perform the following tasks:

- Prepare complete meals, meal components, or raw materials meals according the menu specifications provided by the CE, including ready-to-serve meals, heat-and-serve meals, ready-to-prepare meals, and raw ingredients.
- Provide menu choices from which the CE may choose meals or food and beverage items to be served.
- Deliver meals, meal components, or raw ingredients at designated times to designated locations.
- Serve meal in portions as described in the planned menu.
- Provide documentation that demonstrates that the prepared meals or food and beverage items delivered meet the program requirements as indicated in the contract. This would include providing product labels and other appropriate documentation demonstrating that specific food and beverage items contain the appropriate amount of ingredients for the items to meet the meal pattern or Competitive Food Nutrition Standards.

## Inappropriate Use of a Vended Meal Contract

A vended meal contractor cannot perform the following tasks:

- Determine if the meal served meets the meal pattern at the point of service (POS).  
*[NOTE: The CE provides meal pattern specifications to the vendor. The vendor supplies a meal as specified. It is the CE's responsibility to determine if the meal that is served is reimbursable.]*
- Code a meal as reimbursable in the POS system.
- Count and collect data for CE claims.
- Receive direct delivery of USDA Foods.<sup>38</sup>

If the activities in this contract include duties or actions that are considered to be program operation or management tasks, the CE must reevaluate its vendor's solicitation and contract and either remove those duties or reissue a solicitation for an FSMC contract.

## Vendor Contract, Responsibility for Program Compliance

The CE cannot delegate its responsibility to operate and manage the program in compliance with all applicable federal, state, and local regulations. The CE is also responsible for ensuring that the activities described in a vendor's contract are appropriate for this type of contract, that is, the activities do not involve program management.

## Procuring a Vendor Contract

A CE must procure a vendor's contract appropriately as described in *Administrator's Reference Manual, Section 17, Procurement*. In the solicitation and contract, the CE should include the following information and requirements at a minimum:

### Scope of Work

- Specific description of the meals/food or beverage items the CE intends for the vendor to provide.
- Explanation and description of the meal pattern specifications that meals are to meet as well as types of meal options the CE wants the vendor to provide.
- Detailed information on how the food is to be delivered: packaging, containers, food safety requirements, etc.
- Description of the quality of food and beverage items the vendor is to provide.
- Description of the number of meals, food, or beverages to be delivered, the time(s) of delivery, and the location for deliver.

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<sup>38</sup> USDA is piloting the delivery of USDA Foods to vended meal providers. CEs not participating in the pilot must accept delivery of USDA Foods and arrange for delivery from an acceptable delivery location to the vendor.

- Explanation of any equipment or facility support the CE will provide.
- Explanation of how or if the CE will approve substitutions.
- Explanation of how leftover meals are to be handled.
- Explanation of the type of documentation the CE will require the vendor to retain and the process for providing retained documentation to the CE on request and on a routine basis.
- Explanation of when and how the CE will notify the vendor if there is a change in the CE's standard order based on early release, field trips, or other changes to the students' regular schedule.

### **Financial Elements**

- Explanation that the offer to be submitted is for a set price,<sup>39</sup> i.e., the offer must include a statement for the total costs for the contract.
- Process for submitting invoices and receiving payment.

### **Terms and Conditions**

- Process for addressing conflicts in the contract.
- Statement of the expected timeline for the contract duration.
- Terms and conditions for terminating the contract.

As a best practice, CE's may consider a provision stating that any silence, absence or omission from the contract specifications concerning any point must be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the CE is to be used. This provision should be contained in both the IFB/RFP and the contract.

## **Additional Resources**

TDA provides the required resources for procuring or renewing a contract for an FSMC on the SquareMeals website.<sup>40</sup>

Additionally, TDA has developed the FSMC Monitoring Form to assist CEs in reviewing the FSMC's operation. It is also available at [www.squaremeals.org](http://www.squaremeals.org).

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<sup>39</sup> A vendor's contract cannot be awarded to an offeror that has submitted a cost plus percentage or cost plus added expenses. All costs to be charged for the contract must be included in the offer.

<sup>40</sup> Available at [www.squaremeals.org](http://www.squaremeals.org).

## Records Retention

CEs must retain documentation about food production and service. 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, nonprofit organizations, and residential child care institutions after the end of the fiscal year to which they pertain.

When a CE engages an FSMC to manage its food service program, the CE must work with the FSMC to ensure that all required records are provided to the CE in a timely manner. It is the responsibility of the CE to ensure that all required records are retained and maintained for the period of time required.

CEs have the option to maintain records on paper or electronically. If the operational tasks are performed by the FSMC, the CE must still ensure that all required documentation is retained and made available to the CE. 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.

TDA may also request documentation for both offsite and onsite administrative review. CEs are encouraged to develop a system of document retention that allows them to readily retrieve documentation. Documentation includes, but is not limited to, the following topics:

- Food production
- Program participation
- Procurement
- Financial management
- Eligibility
- Verification
- Practices aligned to the local wellness policy
- Competitive foods
- Professional standards
- Inventory management
- USDA Foods, including USDA Foods values
- Credits, discounts, and rebates

### Information Box 4

#### 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.

- Buy American<sup>41</sup>
- Solicitation and contracts
- Activities to manage the contract

For more information on the specific types of documentation that are required, see *Administrator's Reference Manual, Section 3, Records Retention*.

## 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 FSMC requirements or the requirements related to consultants or vended meals. TDA will assess compliance with the related operational, accounting, procurement, and financial requirements based on the documentation that CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes or other procurement review activities.

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.

## 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.

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<sup>41</sup> Inclusion of this provision in all contracts and all CE approvals of all purchases that do not meet the requirements of the Buy American provision. See the *Administrator's Reference Manual, Section 17, Procurement* for additional information on this topic.

## **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,<sup>42</sup> 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 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.

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<sup>42</sup> Text added. This requirement includes the Special Milk Program.