

## Section 15

# Program Integrity

# Section 15, Program Integrity

## Program Integrity Update Guide

- July 28, 2022 Updated *Section 16, Program Integrity* to clarify the following:  
- Definitions
- August 16, 2021 Updated the definition of aggregate.
- May 27, 2021 Updated *Section 16, Program Integrity* to clarify the following:  
- Definitions
- August 12, 2020 Updated *Administrator's Reference Manual (ARM), Section 15, Program Integrity* to update the *Administrator's Reference Manual (ARM)* section references.
- January 28, 2020 Created a new program integrity section in *Administrator's Reference Manual (ARM), Section 17A, Program Integrity*.

# Table of Contents

<b>Intention for Program Integrity Efforts</b> .....	<b>5</b>
<b>Definitions for This Section</b> .....	<b>6</b>
<b>Program Integrity and Financial Management Systems</b> .....	<b>14</b>
External Contracts and Agreements.....	14
Internal Controls .....	14
<b>Real or Apparent Conflicts of Interest, CE Employees</b> .....	<b>16</b>
Nominal Value.....	16
CE Employee Tangible Benefit.....	16
Contracts .....	17
Incentives, Gratuities, or Kickbacks .....	17
Incentive or Benefits Received .....	17
Food Taken from SNP Sites .....	17
<b>Real or Apparent Conflicts of Interest, Other Individuals or Entities</b> .....	<b>17</b>
CE Communication .....	18
Necessary Documentation.....	18
Third Parties, Including Contractors and Cooperatives, Acting on Behalf of the CE.....	18
<b>Persons and Companies Assisting in Developing a Solicitation</b> .....	<b>19</b>
Potential Offerors or Interested Parties Involved in Developing a Solicitation .....	19
CE Survey of Possible Bidders for Product and/or Service Availability .....	19
<b>Certification Regarding Lobbying</b> .....	<b>20</b>
<b>Debarment and Suspension</b> .....	<b>20</b>
<b>Staff Taking Food for Personal Use</b> .....	<b>21</b>
<b>Written Procedures to Support Program Integrity</b> .....	<b>21</b>
<b>Written Procedures, Conflict of Interest</b> .....	<b>22</b>
<b>Resources</b> .....	<b>22</b>
<b>Records Retention</b> .....	<b>23</b>
<b>Compliance</b> .....	<b>23</b>
<b>Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations</b> .....	<b>24</b>
<b>Criminal Penalty</b> .....	<b>24</b>
<b>Fraud</b> .....	<b>24</b>
<b>Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds</b> .....	<b>24</b>

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

**General Contact Information**

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

**Questions about Program Applications**

**Child & Adult Care Food Program**

[CACFP.BOps@TexasAgriculture.gov](mailto:CACFP.BOps@TexasAgriculture.gov)

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

[NSLP-SBP.BOps@TexasAgriculture.gov](mailto:NSLP-SBP.BOps@TexasAgriculture.gov)

**Seamless Summer Option**

[SSO.BOps@TexasAgriculture.gov](mailto:SSO.BOps@TexasAgriculture.gov)

**Summer Food Service Program**

[SFSP.BOps@TexasAgriculture.gov](mailto:SFSP.BOps@TexasAgriculture.gov)

**Questions about Program Flexibility**

[SNPWaivers@TexasAgriculture.gov](mailto:SNPWaivers@TexasAgriculture.gov) for questions about

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

[Nutrition@TexasAgriculture.gov](mailto:Nutrition@TexasAgriculture.gov) for questions about

- Milk Substitute Notification

**Questions about Program Operation**

**USDA Foods Operations**

[CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov)

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

[Community.Ops@TexasAgriculture.gov](mailto:Community.Ops@TexasAgriculture.gov)

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

[School.Operations@TexasAgriculture.gov](mailto:School.Operations@TexasAgriculture.gov)

**Texas Eligibility List Management System (Texas ELMS)**

[DirectCertification@TexasAgriculture.gov](mailto:DirectCertification@TexasAgriculture.gov)

**Farm Fresh Initiative (Local Products)**

[FarmFresh@TexasAgriculture.gov](mailto:FarmFresh@TexasAgriculture.gov)

**Questions about Financial Issues**

**Capital Expenditures**

[NSLP-SBP.BOps@TexasAgriculture.gov](mailto:NSLP-SBP.BOps@TexasAgriculture.gov)

**Claims**

[BCT.BOps@TexasAgriculture.gov](mailto:BCT.BOps@TexasAgriculture.gov)

**Procurement, Including Sole Source and Emergency Procurement**

[CE.ProcurementReviews.BOps@TexasAgriculture.gov](mailto:CE.ProcurementReviews.BOps@TexasAgriculture.gov)

**Excessive Balance Plan**

[School.Operations@TexasAgriculture.gov](mailto:School.Operations@TexasAgriculture.gov)

**Questions about USDA Foods**

**USDA Foods Carryover Inventory**

[CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov)

**USDA Foods Transfer**

[CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov)

June 22, 2020

# Program Integrity

School Nutrition Programs (SNPs) are designed and funded to provide nutritional meals to students. Contracting entities (CEs) and CE employees are expected to operate these programs in a manner that promotes program integrity.

There are multiple terms that are commonly used related to program integrity—ethical standards, code of conduct, and conflict of interest; for this section, program integrity includes all these topics.

While program integrity is a key element of all aspects of program operation, the guidance in the following *Administrator's Reference Manual (ARM)* sections will also assist the CE in promoting program integrity:

- *Section 2, Program Application & Agreement*
- *Section 3, Civil Rights and Confidentiality*
- *Section 16, Financial System*
- *Section 16a, Contract Management*
- *Section 17, Procurement*
- *Section 17a, Procurement Procedures*
- *Section 17b, Buy American*
- *Section 17c, Cooperative Purchasing*
- *Section 18, Food Service Contracts*
- *Section 19, Meal Pricing*
- *Section 20, Counting & Claiming*
- *Section 30, Records Retention*
- *Section 31, Administrative & Other Compliance Reviews*

## **Intention for Program Integrity Efforts**

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.

## Definitions for This Section

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

Acting on Behalf of CE	Entity or person who has been given the responsibility to act for the CE.
Agent	Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.
Aggregate Purchase Amount	The total cost of all products and services in a single procurement transaction.
Agreement (for School Nutrition Programs)	Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.
Allocable	Assigning a cost, or group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship—the cost meets one of the following principles: <ul style="list-style-type: none"> <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>
Allowable	Direct or indirect costs that may be paid by SNP funds.
Approved Supplier List	List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources.
Arms-Length Transaction	Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other’s control or dominant influence, and the transaction is treated with fairness, integrity, and legality. <b>Less than Arms-Length Transaction</b> A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors, or members; and an organization and a director or employee of the organization and his or her immediate family.
Audit	Independent examination of accounting and financial records for accuracy, efficiency, and consistency. This is also called the annual audit or single audit.
Audit Report	Final summary of audit findings provided by a financial auditor.
Audit Corrective Action Plan	Plan in which the CE describes the strategies or actions the CE will adopt to address each finding reported in the audit report.
Audit Summary Schedule or Work Plan	Document that contains a cumulative list of audit findings by year and explanations of the strategies and actions the CE plans to take or has taken to resolve each audit finding. This summary allows the CE, auditor, or TDA staff member to review the actions planned or taken from year to year to maintain an accurate, efficient, and consistent accounting and financial system.
Bid Guarantee	Guaranteed percentage of bid price provided by the offeror at the time the offer is submitted. The CE must return all bid guarantees to all unsuccessful offerors when the contract is awarded and to the winning offeror as soon as the contract is signed.

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

<sup>1</sup> TDA must approve capital expenditures before a CE makes a capital expenditure purchase.

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

<sup>2</sup> Covered transactions in this section refer to transactions related to child nutrition programs.

<sup>3</sup> See the *Administrator's Reference Manual (ARM), Section 16, Financial System* for additional information on this requirement.



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

<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.

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

<sup>5</sup> This definition is taken from USDA regulation.

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

Regulatory Authority	Oversight authority dictated by legislative act or regulation.
Request for Proposals (RFP)	Formal procurement method where potential contractors submit an offer to provide products and/or services under a fixed-price or cost-reimbursable type contract.
Responsible (Offer)	Capable of providing the product(s) and/or service(s), as described in the solicitation.
Responsive (Offer)	Offer that addresses the terms and conditions of the solicitation, including the specifications and/or technical requirements for product(s) and/or service(s).
Revenue	Income received by an organization.
Revenue to the School Nutrition Program (SNP) Account	<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>
Service Fee	Fee charged for the performance of a specific service.
Simplified Acquisition Threshold (Also Called Small Purchase Threshold)	Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be used.
Single Audit	Organization–wide review of the financial transactions—income and expenditures—and accounting procedures.
Sole Source Method	Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.
Solicitation	Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.
Specifications and Technical Requirements	Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.
State Matching Funds	Matching funds provided to local education agencies (LEAs) that participate in NSLP by the state of Texas based on the number of lunches reported on reimbursement claims filed during the period of September 1 through August 31 of the prior year. RCCIs and private schools do not receive state matching funds.
Subgrantees	Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.
Supplier (Sometimes Called Vendor)	Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.
Supplies	Items that are expendable or consumed in day-to-day activities and replenished as needed.

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

## Program Integrity and Financial Management Systems

School Nutrition Program (SNP) accounts are required to comply with generally accepted accounting principles (GAAP) for federally funded programs. Compliance with the GAAP includes compliance with the *Standards for Internal Control in the Federal Government*<sup>6</sup> issued by the Comptroller General of the United States or the *Internal Control Integrated Framework*<sup>7</sup> issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In Texas, CEs must also apply all local and state financial and accounting requirements that are not in conflict with USDA regulations. This includes, but is not limited to, Texas Education Agency (TEA) regulations that apply to school districts and charter schools.

A financial management system provides safeguards that improve the stewardship of federal money and reduce fraud and improper payments by the use of internal controls.

The CE is responsible for compliance with all program regulations. This includes, but is not limited to, the following:

- Procurement practices
- Use of all funds, including allowable and unallowable costs
- Credit for all income to the nonprofit school food service account, including, but not limited to, reimbursements and other payments to the program
- Credit for the value of USDA Foods
- Credits, rebates, and discounts
- Operational requirements as defined in regulation

For procurement, the internal controls incorporated into a CE's financial management system must (1) define actions related to financial and procurement processes, (2) establish standards of ethical conduct, and (3) provide full and open competition.<sup>8</sup>

### External Contracts and Agreements

For CEs that have external contracts and agreements to assist them with financial operations and program operation, the CE's financial management system must also incorporate methods to manage these contracts in compliance with all applicable regulations.

### Internal Controls

To foster program integrity, the CE must include internal controls in its financial management system, which includes, but is not limited to, the following:

1. Establish and maintain effective oversight over the SNP's financial management system to ensure that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award.<sup>9</sup>
2. Establish and maintain effective oversight over actions related to all financial processes, including, but not limited to, accounting for revenue to the program.

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<sup>6</sup> Available at [www.gao.gov/products/gao-14-704G](http://www.gao.gov/products/gao-14-704G)

<sup>7</sup> Available at [www.coso.org](http://www.coso.org)

<sup>8</sup> See the *Full and Open Competition* subsection in this section for additional information on this topic.

<sup>9</sup> See *Administrator's Reference Manual (ARM), Section 14, Financial System* for additional information on this topic

3. Establish standards of ethical conduct for all financial actions, including, but not limited to, real or apparent conflicts of interest.
4. Govern the performance of employees, officers, or agents of the CE that are engaged in the selection, award, and administration of the contracts.
5. Prohibit the solicitation and acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.<sup>10</sup>
6. Establish standards for situations when an unsolicited gift of nominal value may be accepted.<sup>11</sup>
7. Include procedures for employee disclosure of and action to address all real or apparent conflicts of interest.
8. Describe disciplinary actions for violations of ethical standards or code of conduct.
9. Establish training to assist employees in avoiding conflicts of interest and addressing conflicts of interest.

Each of these internal controls must be addressed in the CE's written procedures and communicated to CE employees.

Well-designed internal controls for financial systems 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 management 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.

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<sup>10</sup> See the *Nominal Value* and *Real or Apparent Conflict of Interest* subsections in this section for additional guidance on this topic

<sup>11</sup> See the *Nominal Value* and *Real or Apparent Conflict of Interest* subsections in this section for additional guidance on this topic

## Real or Apparent Conflicts of Interest, CE Employees

For this section, the term CE employee will be used to represent a CE employee or official; a family member of CE employee or official; or business partner of a CE employee or official.

CE employees must not solicit or accept gratuities, favors, or anything of value to perform improper financial actions, including actions related to procuring contractors or parties to subcontracts. When this occurs, there is a conflict of interest.

A conflict of interest is any action that allows a person to benefit at the expense of the public interest or the expense of his or her employer. A conflict of interest may be real or apparent, i.e., a conflict of interest does not have to be acted upon to be considered a conflict of interest.

A real or apparent conflict of interest occurs in situations such as the following:

- CE employee has a financial or other interest in a business being considered for a contract.
- CE employee receives a tangible personal benefit from a business being considered for a contract.
- CE employee has a personal relationship or friendship with a business being considered for a contract.
- CE employee is employed by, about to be employed by, or is seeking employment from a business being considered for a contract.

In all cases, if the CE has a question about whether a specific situation is a conflict of interest, the CE should consult with legal counsel.

### Nominal Value

CEs should set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.<sup>12</sup> The nominal value is commonly defined as the cost of a cup of coffee. Nominal value must be included in the CE's written procedures and communicated to CE employees.

### CE Employee Tangible Benefit

If a CE employee receives a tangible benefit for taking a financial action or procurement, there is a conflict of interest. A tangible benefit includes, but is not limited to, the following:

- Offering a special item at a much lower price than the price structure for a current contract.
- Offering an item not presently used by the CE at a special price that is below market value.

Information Box 1 Individuals or Entities, Conflict of Interest
The following circumstances may foster conflicts of interests: <ul style="list-style-type: none"><li>– Arbitrary action</li><li>– Business interest in or corporate relationship among those involved</li><li>– Financial or other interest</li><li>– Noncompetitive contracts</li><li>– Organizational conflicts</li><li>– Relationships between affiliate or subsidiary organizations/firms/companies</li><li>– Tangible benefit received</li></ul>

<sup>12</sup> Examples of nominal value include inexpensive aprons, calendars, mousepads, or coffee cups.



- Offering an incentive, such as equipment or other prizes for purchasing items.
- Allowing staff to make purchases from a CE-procured contract. See *Information Box 2, Employee Purchase of Items on a CE's Contract Conflict of Interest* for additional guidance on this topic.

### Contracts

When there is a real or apparent conflict of interest, the employee, officer, or agent cannot participate in the selection, award, or administration of a contract supported by federal funds.

### Incentives, Gratuities, or Kickbacks

CE employees cannot receive incentives, gratuities, or kickbacks to take a financial action or procure an item or service; this includes, but are not limited to, personal gifts, gratuities, or personal purchases<sup>13</sup> off a CE-procured contract. These benefits or incentives may be construed to have been given to influence the purchasing process.

### Incentive or Benefits Received

In a case where a benefit offered as part of a responsive<sup>14</sup> offer is allowable, the benefit or incentive must become the property of the SNP. Under no condition can the incentive become the property of an individual.

### Food Taken from SNP Sites

No food, not even leftover food (including milk), can be taken from SNP sites by CE employees for personal use, personal gain, or benefit to another person or entity.<sup>15</sup>

The CE must address these issues in its written procedures and must communicate these procedures to CE employees. See the *Written Procedures to Support Program Integrity* subsection in this section for additional guidance on written procedures for this purpose.

Information Box 2
<b>Employee Purchase of Items on a CE's Contract Conflict of Interest</b>
When a CE employee makes a purchase for an item on a CE-awarded contract, the individual is accepting the cash difference between the bid or discount price and the amount the CE employee would have paid for the item in the regular retail market. This is a financial incentive.
Even though the individual pays for the purchase, the payment does not remove the financial incentive. Even if the contractor were to charge the retail price, the individual would still be receiving the convenience of a personal delivery and would be accepting a favor from the contractor—therefore, this is an unallowable practice.

## Real or Apparent Conflicts of Interest, Other Individuals or Entities

Any individual or entity acting on behalf<sup>16</sup> of a CE operating a Child Nutrition Program (CNP) is also required to follow all state and federal program integrity regulations.

**Actions that can result in real or apparent conflicts of interest apply to any individual or agency that is affiliated with, associated with, partnered with, or has a subsidiary relationship with the individual or agency acting on behalf of the CE.**

<sup>13</sup> See *Information Box 2, Employee Purchase of Items on a CE's Contract Conflict of Interest* for additional guidance on this topic

<sup>14</sup> See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on responsive offers.

<sup>15</sup> See *Administrator's Reference Manual (ARM), Section 14, Financial System* and *Section 21, Meal Service* for additional information on giving food away at no charge and donation programs.

<sup>16</sup> See the *Definitions for This Section* subsection in this section for additional information on this topic.

[NOTE: These types of real or apparent conflicts of interest often result in duplicative services and lack of competition.]

### CE Communication

A CE must communicate its expectations and applicable procedures related to program integrity to individuals and entities acting on the CE's behalf.<sup>17</sup> This information must be included in solicitations, agreements, contracts, and other communications as appropriate. The expectations and applicable procedures must include, but are not limited to, documentation to demonstrate compliance with all requirements and regulations.

### Necessary Documentation

All third-party entities must provide the CE with adequate documentation,<sup>18</sup> so the CE is able to determine if the procurement regulations have been implemented appropriately by the third-party entity. This includes, but is not limited to, documentation related to credits, rebates, discounts, and USDA Foods values.

Information Box 3
Individuals or Entities, Conflict of Interest
Individuals or agencies acting on behalf of the CE include, but are not limited to, the following:
– Agent
– Business
– Consultant
– Contractor
– Cooperative
– Distributor
– Food Processor
– Food Service Management Company (FSMC)
– For Profit Organization
– Nonprofit Organization
– Third party
– Vendor

### Third Parties, Including Contractors and Cooperatives, Acting on Behalf of the CE

USDA also prohibits third party contractors or cooperatives that procure products and/or services on behalf of the CE from procuring the products and/or services from the third party's parent company, subsidiary of the parent company, or other entities with a financial relationship to the third party. These types of situations represent a real or apparent conflict of interest, limit competitive procurement, and result in the use of school nutrition funds to pay for the costs of duplicative services. Duplicative costs are unallowable to nonprofit school food service account.

Conflict of interest circumstances include, but are not limited to, a third-party purchasing from the third party owned (contractor or cooperative) or affiliated vendors. Moreover, when a third party publishes a solicitation and procures on behalf of a CE, the third party cannot award a contract to the third party's parent company, a subsidiary company of the third party's parent company, or any entity with a financial relationship with the third party.

In this circumstance, awarding a contract to an entity that has a financial relationship with a third party acting on behalf of the CE constitutes an unfair advantage and is in violation of federal procurement requirements. This type of arrangement may also result in the CE paying for duplicative services. Duplicative costs are an unallowable cost to the nonprofit school food service account.

<sup>17</sup> See the *Definitions for This Section* subsection in this section for additional information on this topic.

<sup>18</sup> See the *Records Retention* subsection in this section for additional information on documentation.

## Persons and Companies Assisting in Developing a Solicitation

When acquiring goods and services, CEs may contract with agents or companies that provide technical information in drafting procurement specifications and/or technical requirements. This provision is intended to encourage program administrators to obtain information from as many sources as possible to assist them in drafting procurement documents.<sup>19</sup>

### Potential Offerors or Interested Parties Involved in Developing a Solicitation

It is a conflict of interest for a potential offeror to have prior knowledge of the solicitation or assist in the development of solicitation. Prior knowledge and assistance include, but are not limited to, the potential offeror having input into any aspect of solicitation specifications and/or technical requirements, solicitation documentation, evaluation criteria, or award process.

For Example: If a food service management company (FSMC) provides a cycle menu to a CE that will 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.

If a CE awards a contract to any individual, entity, business, or organization that has provided information or documentation for the solicitation or contract, the costs of the contract are unallowable and cannot be paid with funds from the nonprofit school food service account.

Therefore, the CE must not (1) engage an individual, entity, business, or organization in the development of a food service solicitation and/or contract if that individual, entity, business, or organization will be submitting an offer for a food service contract or (2) use information that is prepared by any individual, entity, business, or organization that will be submitting an offer for a contract.

Moreover, when any individual, entity, business, or organization assists a CE in the development of a solicitation or contract to procure additional services and/or products outside of a current contract, the CE must not award the contract to an offeror if any one of the following conditions exists:

- The offer is submitted by an individual, entity, business, or organization that assisted the CE in the development of the solicitation.
- The offer is submitted by the parent company of the individual, entity, business, or organization that assisted the CE in the development of the solicitation.
- The offer is submitted by any subsidiaries of the individual, entity, business, or organization that assisted the CE in the development of the solicitation.

### CE Survey of Possible Bidders for Product and/or Service Availability

A CE may survey prospective offerors to determine if there are individuals, entities, businesses, or organizations that are able to provide specific products and services. In cases where CEs conduct a survey of potential offerors, the CE must take care to ensure

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<sup>19</sup> See the *Written Procurement Procedures* subsection in this section for additional information on requirements related to this topic.

that possible offerors do not assist the CE in preparing the solicitation/contract. If a potential bidder assists the CE in preparing a solicitation or contract, the potential offeror cannot be awarded the contract.

A CE's written procedures must address when and how it will use agents or companies to assist them in developing solicitations.

## Certification Regarding Lobbying

Lobbying certification requirements are applicable to grants, subgrants, cooperative agreements, and contracts exceeding \$100,000 in federal funds. CEs must have procedures in place that describe how this requirement will be met, which include, but are not limited to, the following:

- Documentation: Actions taken to ensure that the proper documentation is prepared, shared as required, and retained.<sup>20</sup>
- Use of Funds: Statement that federal funds must not be paid by or on behalf of the CE to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

## Debarment and Suspension

CEs and their subcontractors must not make or permit any award, subaward, subgrant, or contract with an individual or entity that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

In its written procedures, the CE must define how it will obtain a debarment and suspension certification from each of its contracts.

The CE may use any of the following actions to accomplish this purpose:

- **Include the following debarment and suspension certification in the written agreement with the subcontractor:**  
{Enter name of subcontracting organization} certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency or by the State of Texas. {Enter name of subcontracting organization} shall immediately provide written notice to {Enter name of CE} if at any time the {Enter name of subcontracting organization} learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. {Enter name of CE} may rely upon a certification of a subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless it knows that the certification is erroneous.
- **Require the subcontractor to sign and submit the TDA form entitled *Certification Regarding Debarment, Suspension, Ineligibility and***

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<sup>20</sup> See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on this topic.

*Voluntary Exclusion for Covered Contracts (H2048)*<sup>21</sup> and maintain the signed form with its contract record.

- Print the page from the System for Award Management, which indicates the subcontractor is not presently debarred or otherwise excluded from participation in the contract by any federal department or agency or by the State of Texas and maintaining that document on file with the contract documents. The System for Award Management can be accessed at [www.sam.gov/portal/SAM/#1](http://www.sam.gov/portal/SAM/#1).

## Staff Taking Food for Personal Use

SNP staff must also be mindful that they cannot take SNP food for personal use,<sup>22</sup> i.e., personally profit from the SNP. CEs must have policies or guidelines in place that ensure that SNP staff do not profit from the SNP, including through donation programs.

## Written Procedures to Support Program Integrity

CEs are required to have written procedures to encourage and support program integrity that establishes ethical standards for the operation and management of Child Nutrition Programs (CNPs). These written procedures must **reflect applicable local, state,<sup>23</sup> and federal regulations** that include, but are not limited to, checks and balances that provide internal controls for all financial matters.

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. They may have a written plan which describes actions specific to topics or schedules with timelines and tasks in procedures or as standalone documents.

For this section, the term procedure is used to refer to processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions employees are to take.

The CE's procedures must state how the CE will incorporate program integrity requirements into its financial management system and must state the specific roles and responsibilities of employees in maintaining internal controls. These procedures are intended to (1) guide employees by defining the roles and responsibilities for all involved and (2) address the code of conduct that governs the performance of the CE's employees, officers, and agents as required by local, state, and federal regulations.

These procedures must also ensure that CE personnel do not circumvent federal and state regulations—no matter the reason, well-intentioned or fraudulent.

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<sup>21</sup> Available at [www.squaremeals.org](http://www.squaremeals.org)

<sup>22</sup> SNP staff assisting with the operation and supervision of the nutrition program may be served a meal at no cost before, during, or after the meal service.

<sup>23</sup> CEs that are administered or managed by a state or local government or Indian tribe may be required to follow written standards of conduct established by the governing state or local government or Indian tribe. In these cases, the CE must ensure that the code of conduct required by the state or local government or Indian tribe is also in compliance with USDA regulations.

## Written Procedures, Conflict of Interest

Procedures for conflict of interest include, but are not limited to, the following:

- Definitions for conflict of interest terms, including, but not limited to, real or apparent conflicts of interest; nominal value; tangible benefits; incentives, gratuities, or kickbacks; incentives or benefits; and food taken from SNP sites.<sup>24</sup>
- Disciplinary actions to be applied for violations of such standards by CE employees, CE officers, or individuals or agents acting on the CE's behalf.
  - This includes methods to address how employees will avoid conflicts of interest and how the CE will treat situations where individuals receive incentives, gratuities, or kickbacks for financial transactions.
  - This includes addressing situations where the CE or individual, or entity acting on behalf of the CE, is unable, or appears to be unable, to be impartial in conducting action involving a related entity or organization.
- Guidance on how to avoid undue influence.
- Method(s) for an individual to disclose in writing any possible situations where there is an appearance of incentives, gratuities, or kickbacks being received.<sup>25</sup>

## Resources

CEs may find the following resources helpful in establishing procedures for program integrity:

### Texas Resources

Resources include the following:

- Texas Procurement and Support Services (TPASS) (Formerly the Texas Building and Procurement Commission). Available at [www.window.state.tx.us/procurement/](http://www.window.state.tx.us/procurement/)
- Texas Comptroller of Public Accounts. Available at [www.cpa.state.tx.us](http://www.cpa.state.tx.us)
- *Texas Comptroller's Office, 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 Comptroller's Office, 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, Financial Accountability System Resource Guide* provides detailed guidance of financial accountability, including Module 5, Purchasing, for local education agencies and charter schools. Available at [www.tea.texas.gov/Finance\\_and\\_Grants/Financial\\_Accountability/Financial\\_Accountability\\_System\\_Resource\\_Guide/](http://www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/)

<sup>24</sup> See the Real or Apparent Conflict of Interest subsections in this section for additional guidance on this topic.

<sup>25</sup> The Texas Education Agency has additional requirements related to proper disclosure. These requirements are not in conflict with USDA regulations. TEA requires that school districts and charter schools use *Form 1295, Certificate of Interested Parties* for this purpose. CEs may include the use of this form to address potential conflicts of interest in SNP procurement.

## United States Office of Management and Budget (OMB)

- *2 Code of Federal Regulations (CFR), Part 200*—These regulations provide detailed information on the required federal procurement process. Available at [www.fns.usda.gov/es/node/73141](http://www.fns.usda.gov/es/node/73141)

## National Institute of Government Purchasing (NIGP)

- Universal Public Purchasing Certification Council/National Institute of Government Purchasing (NIGP), available at [www.nigp.org](http://www.nigp.org)

## Records Retention

The CE must maintain records for all program operations, including procedures and processes related to program integrity. Records related to program integrity will include documentation related to all operational issues, including, but not limited to, financial management and procurement. CEs have the option to maintain records on paper or electronically.

These records must be accessible to appropriate CE employees and federal or state reviewers. TDA may request documentation related to program integrity during both offsite and onsite administrative review processes as well as reviews 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.

Information Box 4
Records Retention
Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.
Nonprofit private schools, other organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

## Compliance

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 compliant 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.

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance. 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. 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.

## **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 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.