Section 17a

Procurement Procedures
## Section 17a, Procurement Procedures

### Update Guide

<table>
<thead>
<tr>
<th>Date</th>
<th>Update Details</th>
</tr>
</thead>
</table>
| July 28, 2022 | Clarified the following guidance:  
|            | - Definitions |
| August 16, 2021 | Updated the definition of aggregate. |
| May 27, 2021  | Updated Section 17a, Procurement Procedures to clarify the following:  
|            | - Definitions |
| August 12, 2020 | Created Section 17a, Procurement Procedures and updated the Administrator’s Reference Manual (ARM) sections references. Guidance for this new section was taken from Administrator’s Reference Manual (ARM), Section 17, Procurement. |
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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**

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

**Questions about Program Applications**

- **Child & Adult Care Food Program**
  - CACFP.BOps@TexasAgriculture.gov
- **National School Lunch Program, School Breakfast Program, & Special Milk Program**
  - NSLP-SBP.BOps@TexasAgriculture.gov
- **Seamless Summer Option**
  - SSO.BOps@TexasAgriculture.gov
- **Summer Food Service Program**
  - SFSP.BOps@TexasAgriculture.gov

**Questions about Program Flexibility**

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

- **Nutrition@TexasAgriculture.gov** for questions about
  - Milk Substitute Notification

**USDA Foods Operations**

- CommodityOperations@TexasAgriculture.gov
- Community Operations (Child & Adult Care Food Program & Summer Food Service Program)
  - Community.Ops@TexasAgriculture.gov
- School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)
  - School.Operations@TexasAgriculture.gov
- Texas Eligibility List Management System (Texas ELMS)
  - DirectCertification@TexasAgriculture.gov
- Farm Fresh Initiative (Local Products)
  - FarmFresh@TexasAgriculture.gov

**Questions about Program Operation**

**Questions about Financial Issues**

- **NSLP-SBP.BOps@TexasAgriculture.gov**
- **BCT.BOps@TexasAgriculture.gov**
- Procurement, Including Sole Source and Emergency Procurement
  - CE.ProcurementReviews.BOps@TexasAgriculture.gov
- Excessive Balance Plan
  - School.Operations@TexasAgriculture.gov
- **USDA Foods Carryover Inventory**
  - CommodityOperations@TexasAgriculture.gov
- **USDA Foods Transfer**
  - CommodityOperations@TexasAgriculture.gov

**Capital Expenditures**

<table>
<thead>
<tr>
<th>Questions about USDA Foods</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="mailto:NSLP-SBP.BOps@TexasAgriculture.gov">NSLP-SBP.BOps@TexasAgriculture.gov</a></td>
</tr>
<tr>
<td><a href="mailto:BCT.BOps@TexasAgriculture.gov">BCT.BOps@TexasAgriculture.gov</a></td>
</tr>
<tr>
<td>Procurement, Including Sole Source and Emergency Procurement</td>
</tr>
<tr>
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<tr>
<td>Excessive Balance Plan</td>
</tr>
<tr>
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<tr>
<td>USDA Foods Carryover Inventory</td>
</tr>
<tr>
<td><a href="mailto:CommodityOperations@TexasAgriculture.gov">CommodityOperations@TexasAgriculture.gov</a></td>
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<td><a href="mailto:CommodityOperations@TexasAgriculture.gov">CommodityOperations@TexasAgriculture.gov</a></td>
</tr>
</tbody>
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June 22, 2020
Procurement Procedures

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

For this section, when the word contract is used, the guidance applies to both contracts and agreements, as appropriate.

Procurement on Behalf of the CE

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

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

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

NSLP CEs that operate CACFP At-Risk and/or SFSP may use the NSLP procurement regulations instead of the CACFP and/or SFSP procurement regulations.

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

- Section 14, USDA Foods
- Section 14a, USDA Foods Processors
- Section 15, Program Integrity
- Section 16, Financial System

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Information Box 1

Additional Resources for Procurement

Texas Comptroller of Public Accounts

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

Resources include the following:


Texas Education Agency (TEA)


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
Procurement procedures are 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.

Procurement procedures assist users in applying internal controls that foster effective financial management system and safeguards to ensure the stewardship of federal money and reduce fraud and improper payments.

Administrator's Reference Manual (ARM), Section 15, Program Integrity provides detailed guidance on program integrity.
## 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:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acting on Behalf of CE</td>
<td>Entity or person who has been given the responsibility to act for the CE.</td>
</tr>
<tr>
<td>Agent</td>
<td>Person or business that is procured to act on behalf of the CE. This includes procuring on behalf of the CE.</td>
</tr>
<tr>
<td>Aggregate Purchase Amount</td>
<td>The total cost of all products and services in a single procurement transaction.</td>
</tr>
<tr>
<td>Agreement (for School Nutrition Programs)</td>
<td>Written legal document summarizing contractual obligations between two or more entities. This includes intergovernmental and interlocal agreement.</td>
</tr>
</tbody>
</table>
| 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:  
  - is incurred specifically for the award/program or  
  - benefits both the award/program and necessary work and can be distributed in reasonable proportion to the benefits received or  
  - is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown. |
| Allowable                                 | Direct or indirect costs that may be paid by SNP funds.                                                                                                                                                    |
| Approved Supplier List                   | List of suppliers or potential contractors who have demonstrated the ability to perform successfully under the terms and conditions of a proposed procurement, consideration being given to contractor integrity, compliance with applicable policy or regulations, record of past performance, and financial and technical resources. |
| Arms-Length Transaction                   | Transaction in which the parties are dealing from equal bargaining positions—neither party is subject to the other’s control or dominant influence, and the transaction is treated with fairness, integrity, and legality.  
  Less than Arms-Length Transaction  
  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>| 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. |</p>
<table>
<thead>
<tr>
<th>Bond</th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breach of Ethics</td>
<td>Attempt to realize personal gain through public employment with a CE by any conduct inconsistent with the proper discharge of the employee’s duties.</td>
</tr>
<tr>
<td>Brokers</td>
<td>Independent sales agents who negotiate sales for manufacturers by working with food distributors and/or school nutrition operations.</td>
</tr>
<tr>
<td>Buy American</td>
<td>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 and processed in the United States or that is processed in the United States substantially using agricultural commodities that are produced in the United States.</td>
</tr>
<tr>
<td>Capital Assets</td>
<td>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).</td>
</tr>
<tr>
<td>Capital Expenditures</td>
<td>Direct cost expenses to acquire capital assets or to make additions, improvements, modifications, replacements, reinstallations, renovations, or alternations to capital assets to be used for general purposes for multiple years and which materially increase the value or useful life of the asset.¹</td>
</tr>
<tr>
<td>CE Employee (Specific to Program Integrity)</td>
<td>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.</td>
</tr>
<tr>
<td>Charge Period</td>
<td>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.</td>
</tr>
</tbody>
</table>
| 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:  
1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds.  
2. Methods of procurement, including the requirement that the CE perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses and certifications are required in the CE’s contracts. |
| Cognizant Agency Related to Indirect Costs | Agency that has primary responsibility for negotiating the indirect cost methodologies for non-federal entities. |
| Conflict of Interest | Any action that allows a person to benefit at the expense of the public interest or the expense of an employer. A conflict of interest may be a real or apparent conflict of interest. |
| Contract | Formal, legally enforceable agreement (terms and conditions) between a buyer (the CE) and a seller (contractor) that clearly and accurately describes the products and/or services to be delivered or performed and sets forth the method and the compensation the contractor receives when products and/or services are provided. |
| Consultant | Consultant that provides temporary support to the CE in areas where the CE lacks the necessary resources, skills, and/or abilities in order to assist the CE in gaining the necessary resources, skills, and/or abilities to operate an effective and compliant program. |
| Cooperative Purchasing | Group of entities who join together to purchase products and/or services with the intention of reducing costs and improving the quality of products and/or services available to members of a group. In this reference, a purchasing cooperative consists of a group of CEs. |

¹ TDA must approve capital expenditures before a CE makes a capital expenditure purchase.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost Analysis</td>
<td>Review and evaluation of each element of cost to determine reasonableness, allocability, and allowability for products and/or services to procured. A cost analysis will include the total projected cost for the products and/or services to be procured.</td>
</tr>
<tr>
<td>Cost Index</td>
<td>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.</td>
</tr>
<tr>
<td>Cost Objective</td>
<td>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.</td>
</tr>
<tr>
<td>Cost Plus Percentage of Cost</td>
<td>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).</td>
</tr>
</tbody>
</table>
| 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 debarring official to exclude a person from participating in covered transactions. 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. |
| Ethics                                    | Principles of conduct governing and guiding decisions for an individual or a group in their personal and professional lives. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines. |
| Excess Net Cash Resources (Excess Fund Balance) | Net cash resources that exceed three months of operating expenses. For NSLP and SBP an excessive fund balance refers to net cash resources.                                                                          |

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

3 See the Administrator’s Reference Manual (ARM), Section 16, Financial System for additional information on this requirement.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exclusive Contract (Including Exclusive Beverage Contracts)</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Expenditures (Costs)</strong></td>
<td>Amount of money that is spent on an item or service.</td>
</tr>
<tr>
<td><strong>Firm Fixed-Price Contract (Also Called Firm Price Contract)</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Fixed-Price</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Fixed Price (Fee)</strong></td>
<td>Agreed upon amount of money that is fixed at the inception of the contract.</td>
</tr>
<tr>
<td><strong>Food Service Management Company (FSMC)</strong></td>
<td>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. CEs must use an FSMC from TDA’s list of approved FSMCs.</td>
</tr>
<tr>
<td><strong>Food Service Management Company (FSMC) Solicitation/Contract</strong></td>
<td>TDA term used to reference the TDA prototype combined solicitation and contract. This term is applicable to this section only.</td>
</tr>
<tr>
<td><strong>Forecasting</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Full and Open Competition</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Fund Balance (Net Cash Resources)</strong></td>
<td>See “net cash resources.”</td>
</tr>
<tr>
<td><strong>Grade Standards</strong></td>
<td>USDA quality standards based on measurable attributes that describe the value and utility of the products.</td>
</tr>
<tr>
<td><strong>Grantees</strong></td>
<td>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 even if only a particular component of the entity is designated in the grant award document.</td>
</tr>
<tr>
<td><strong>Incentives</strong></td>
<td>Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.</td>
</tr>
<tr>
<td><strong>Indirect Cost</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Indirect Cost Rate</strong></td>
<td>Established percentage of awarded funds that is dedicated to pay costs that have been identified as indirect costs.</td>
</tr>
</tbody>
</table>

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4 If an NSLP CE operates a Child and Adult Care Food Program and/or Summer Food Service Program, there may be additional regulations that applied for the use of an FSMC to operate the program.
| Internal Controls | Procedures or processes designed to establish and maintain effective internal control over the SNP’s financial management system that provides reasonable assurance that the CE is managing the program in compliance with all federal, state, and local regulations and terms and conditions of the program award. These procedures or processes help the CE to (1) define actions related to financial management and the procurement activities, (2) establish standards of ethical conduct, and (3) provide full and open competition. |
| Invitation for Bid (IFB) | Formal method of procurement that uses sealed bidding and results in a fixed-price contract with or without adjustment factors. |
| Just-in-Time (JIT) | Food and supplies kept in quantities an entity anticipates will meet its immediate needs, which results in the entity maintaining a low inventory level. |
| LEA | Local education agency, an entity having administrative control and direction of a public or private nonprofit elementary or secondary school. |
| 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. |

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5 This definition is taken from USDA regulation.
<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Cash Resources</td>
<td>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.</td>
</tr>
<tr>
<td>Noncompetitive Method</td>
<td>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.</td>
</tr>
<tr>
<td>Non-Federal Entity</td>
<td>State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.</td>
</tr>
<tr>
<td>Open Award</td>
<td>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.</td>
</tr>
<tr>
<td>Operating Months</td>
<td>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.</td>
</tr>
<tr>
<td>Operator</td>
<td>Entity that operates a Child Nutrition Program.</td>
</tr>
<tr>
<td>Operator-Only Cooperative</td>
<td>Any type of agreement that is formed solely among CNP operators, including regional education service center (ESC) cooperatives.</td>
</tr>
<tr>
<td>Pass-Through Entity</td>
<td>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.</td>
</tr>
<tr>
<td>Payment Bond</td>
<td>Bond that covers the cost of materials and works for construction contracts.</td>
</tr>
<tr>
<td>Performance Bond</td>
<td>Bond which covers the cost of ensuring that the work is done as specified in the terms of the contract.</td>
</tr>
<tr>
<td>Procedures</td>
<td>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.</td>
</tr>
<tr>
<td>Procurement</td>
<td>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.]</td>
</tr>
<tr>
<td>Procurement Standards</td>
<td>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.</td>
</tr>
<tr>
<td>Program Integrity</td>
<td>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.]</td>
</tr>
<tr>
<td>Program Specific Audit</td>
<td>Review of the financial transactions—income and expenditures—and accounting procedures for a designated program.</td>
</tr>
<tr>
<td>Proprietary Products</td>
<td>Manufactured products ordered specifically for a particular program or are unique to a manufacturer.</td>
</tr>
<tr>
<td>Reasonable Cost</td>
<td>Amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.</td>
</tr>
</tbody>
</table>
### 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.

<table>
<thead>
<tr>
<th>Revenue to the School Nutrition Program (SNP) Account</th>
<th>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:</th>
</tr>
</thead>
</table>
|                                                      | − Federal reimbursement  
|                                                      | − State or local funds, such as per meal subsidies and state revenue matching funds  
|                                                      | − Students’ payment for reimbursable meals and a la carte sales  
|                                                      | − Payments for items purchased for fund raisers and vending machines  
|                                                      | − Income from catering and adult meals |

### Service Fee
Fee charged for the performance of a specific service.

### Simplified Acquisition Threshold (Also Called Small Purchase Threshold)
Amount established by federal, state, or local regulations that defines when formal and informal procurement methods must be used.

### Single Audit
Organization–wide review of the financial transactions—income and expenditures—and accounting procedures.

### Sole Source Method
Noncompetitive procurement method used when products and/or services are available from only one supplier, distributor, or contractor. TDA must approve all sole source methods of procurement.

### Solicitation
Process of notifying prospective or qualified offerors about the specifications or technical requirements for the purchase of products and/or services. For informal procurement, the solicitation may be communicated by email, in person, by fax, or by phone as long as the person soliciting offers documents the specifications or technical requirements to ensure that every possible contractor is given the same information. For a formal procurement, a written solicitation is required.

### Specifications and Technical Requirements
Detailed information included in the solicitation and in the final contract that describes the product(s) and/or service(s) that will be provided to the CE under the contract.

### State Matching Funds
Matching funds provided to local education agencies (LEAs) that participate in NSLP by the state of Texas based on the number of lunches reported on reimbursement claims filed during the period of September 1 through August 31 of the prior year. RCCIs and private schools do not receive state matching funds.

### Subgrantees
Governmental or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.

### Supplier (Sometimes Called Vendor)
Commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a CE to provide products and/or services. A supplier is also referred to as an offeror during the solicitation phase of procurement.

### Supplies
Items that are expendable or consumed in day-to-day activities and replenished as needed.

### Tangible Benefit
Special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items.
### Terms and Conditions
General provisions, definitions for terminology, renewal options, protests, termination, and other standards inherent to the contract.

### Third-Party
Entity that is contracted to act on behalf of another entity.

### Third-Party Cooperative
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.

- **Interagency Agreements**
  - Public, private, and nonprofit entities formed for the purpose of procuring goods and services.

- **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.

### 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 **disallowed** 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
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 **procedure** is used to refer to all of these types of documents.

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.

Written financial and procurement procedures must be established by all CEs.

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### 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 should 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 written procedures.

These procedures are intended to guide staff as they

- plan for procurement,
- define the roles and responsibilities,
- establish internal controls, and
- implement procurement actions.

### Effective Procurement Systems

Procurement procedures provide consistent and replicable practices that are essential to an effective procurement system.

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 process/procurement method, as described in the written procurement procedures (not required for the micro-purchase method).
3. **Develop and publicize** solicitation, as described in the written procurement procedures, as appropriate. (not required for micro-purchase method)
4. **Receive and evaluate** offers according to the rubric or scale, as described in the written procurement procedures.
5. **Determine** the best price, award contract and execute the contract, as described in the written procurement procedures.
6. **Manage** the contract, as described in the written procurement procedures, including required records retention.

### Written Procurement Procedures

CEs must have written procedures for the selection, award, and administration of procurement transactions that support the CE in accomplishing the following:
For each of the following elements the CE must have procedures which describe the actions staff will take, including, but not limited to, actions that promote program integrity.

[NOTE: See the appropriate financial section of the Administrator’s Reference Manual (ARM), for additional guidance on these elements.]

Billing
- Steps to ensure cost billed and amount invoiced are accurate and match the cost as stipulated in the contract before payment is made, including appropriate actions for handling and approving invoices and billing statements.
- Steps to ensure the CE receives owed credits, rebates, discounts, and USDA Foods values, including routine auditing options.

Buy American
- Process for clearly communicating expectations for contractors to meet the Buy American requirements.\(^6\)
- Strategies for ensuring the contractors provide products that are compliant with Buy American provisions.
- Process for an exception to the Buy American provision approval.

Code of Conduct
- Internal controls that address the responsibilities of, or proper practices for, staff that governs the performance for 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.
- Internal controls that address the responsibilities of, or proper practices for, staff that governs the 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.
- Disciplinary actions for violations of the code and conduct.

Conflict of Interest
- Internal controls that address the responsibilities of, or proper practices for, staff that governs the implementation of the CE’s methods to address conflicts of interest and undue influence.
- Terminology and appropriate response for conflicts of interest.
- Disciplinary actions for violations of conflict of interest standards by CE employees, CE officers, or individuals or agents acting on the CE’s behalf.
- Process to ensure that third-party contractors do not contribute to the development of solicitations for which the third-party contractor plans to submit an offer.
  If a third-party contractor does assist in the development of a solicitation, the third-party contractor cannot submit an offer for the solicitation.
- Internal controls to ensure that CEs do not procure contracts with duplicative services (paying for the same service twice) from the same contractor or different contractors.

\(^6\) See Administrator’s Reference Manual (ARM), Section 17b, Buy American for additional information on this topic.
– Internal controls to ensure that CEs do not procure contracts from an individual, agency, or company that is affiliated with, associated with, partnered with, or has a subsidiary relationship with the individual or agency (organization, contractor, vendor, agent, or other entity) acting on behalf of the CE.

This includes allowing a contractor to use a pre-existing contractual relationship instead of conducting a competitive procurement on behalf of a CE.

**Contract Awards**

– Staff authorized to make financial and procurement actions.
– Staff authorized to make decisions for financial and procurement actions.
– Strategies for the evaluation of bids, including determining the most responsible and responsive offer.
– Process to ensure that price is the primary consideration in awarding a contract.

**Contract Management**

– Detailed methods for contact management as described in *Administrator’s Reference Manual (ARM), Section 16a, Contract Management*.

**Contract Solicitation**

[NOTE: A solicitation is not required for a micro-purchase. For a small purchase, the solicitation may be as simple as a prepared list or description to communicate product and/or service quantity and specifications or technical requirements.]

– Timeline for creating solicitations for each purchasing method.
– Guidelines for developing the evaluation criteria to be communicated in a solicitation, including standard evaluation criteria that will apply to similar contracts.
– Processes for forecasting or conducting a cost analysis to establish a preliminary value for the purchase before the creating the solicitation.
– Staff assigned to develop and publicize solicitations.
– Processes for ensuring the notification is provided in a manner that ensures the solicitation reaches a large enough market for the CE to receive competitive offers from multiple vendors.

**Cooperative Purchasing**

– Conditions when the CE will use cooperative purchasing to take advantage of economies of scale.
– Type of cooperative(s) the CE will use.
– Types of products and/or services to be purchased through the cooperative.
– Practices that routinely review documentation to ensure that all credits, rebates, discounts, and USDA Foods values are properly paid to the CE.
– Method for review of the cooperative agreement and monitoring the agreement to ensure it is implemented as written.

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7 With a documented history, a CE may choose not to award a contract to the most responsive and responsible offer.
8 See the *Additional Resources* subsection in this section for additional tools to assist with micro purchases and small purchases.
− Routine reconciliation of purchasing cooperative charges to ensure accuracy and ensure return of any funds over the amount agreed upon.

Dispute Resolution/Termination of Contract
− Process for resolving disputes.
− Processes for ensuring that all contracts contain clauses which describe how disputes will be resolved, including contract termination if issues cannot be resolved.

Dispute Resolution, Protest of an Awarded Contract
− Processes to proactively review procurement processes and solicitations to prevent situations where a valid protest of an awarded contract can be filed.
− Process for resolving protests.
− Method to notify TDA when a protest of an awarded contract occurs.

Full and Open Competition
− Implementation of written procedures to promote competition and avoid restricting competition.
− Process to determine if the CE procurement procedure limits competition
  ▪ 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?
− Conditions which require the CE to restart the procurement process because of lack of full and open competition.

Local Preference
− Conditions when local preference will be applied as a bonus factor to award contracts.
− Definition(s) for local preference that will be applied to purchasing.
Local, State, and Federal Laws and Regulations

− Most restrictive threshold that applies for each procurement method: micro-purchase, small purchase, request for proposals, and invitations for bid

− Practices to ensure full implementation of the Buy American requirements, including established practices for CE staff to approve exceptions.

− Strategies for incorporating the provisions listed in Information Box 3, Other Regulatory Requirements for Solicitations and Contracts.

Material Change

− Process for evaluating to determine if a material change has occurred.

Procurement Methods

− Process for conducting the cost analysis used to determine appropriate procurement method.

− Conditions when the CE will use each procurement method.
  - Informal—Micro Purchase
  - Informal—Small Purchase
  - Formal—Request for Proposal (RFP)
  - Formal—Sealed Bid (IFB)
  - Criteria for using IFB procurement method

− Conditions under which a pre-qualified list will be used and strategies the CE implements to promote pre-qualification of all potential vendors.

Information Box 3

Other Regulatory Requirements for Solicitations and Contracts

BYRD, Anti-Lobbying
(31 U.S.C. 1352)

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

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)

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)

Copeland Anti-Kickback Act
(18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3)

Davis-Bacon Act
40 U.S.C. 276a to 276a-7 as supplemented by Department of Labor regulations (29 CFR Part 5)

Energy Policy and Conservation Act
Public Law 94-163, 89 Statute 871

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)

Health and Safety Certifications, Licensing, or Regulations
Local, state, or federal health and safety certifications, licensing, or regulations

Rights to Inventions (Pertaining to Patent Rights, Copyright and Rights)
37 CFR 401.2

Solid Waste Disposal Act
Section 6002 as amended by the Resource Conservation and Recovery Act

Small and Minority Firms, Women’s Business Enterprise, and Labor Surplus Area Firms (Historically Underutilized Business or HUB)
2 CFR 200.321
− Process for developing evaluation criteria in order to award the contract to the most responsive and responsible offer.
− Timeline for planning and implementing the procurement method.

**Micro-Purchase**
− Strategies for identifying possible suppliers.
− Strategies for equitable distribution for micro-purchases.

**Small Purchase**
− Strategies for identifying possible suppliers and obtain quotes from at least three potential suppliers.
− Processes for requesting offers, including method for communicating specifications, technical requirements, and terms and conditions, as appropriate.

**Formal Purchase—RFP and IFB**
− Strategies for identifying possible suppliers.
− Strategies for developing specifications, technical requirements, and terms and conditions, as appropriate.
− Processes for planning the notification, creating solicitation, and issuing solicitation for the purchase.

**Third-Party Procurement**
− Timeline for reports from the third party for the CE to ensure contracts are operating as intended. TDA recommends that CEs receive reports monthly or quarterly.
− Timeline for the routine reporting of credits, rebates, discounts, and USDA Foods values.
− Process for ensuring that all vendor fees in excess of the stated cost of providing products and/or services are returned to the CE, if applicable.
− Processes of communicating local, state, and federal requirements to all contractors and potential contractors.

### 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 a list of products approved to purchase with information that will be helpful to menu planners and staff managing the contract.

− **Buy American Checklist for Non-Domestic Food Product Purchases**—Checklist to assist CEs in determining if a non-domestic product is acceptable.

− **Procurement Snapshot Tool**—Form designed to provide a summary of procurement activities for the program year or fiscal year.

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9 See the Additional Resources subsection in this section for additional tools to assist with micro purchases and small purchases.

10 See the Additional Resources subsection in this section for additional tools to assist with micro purchases and small purchases.
− **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.theicn.org](http://www.theicn.org)

  
  [NOTE: This resource is not a guidance document, but it does provide useful information.]


**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%20Factsheet.pdf](http://www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Factsheet.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)


**Records Retention**

The CE is required to maintain an organized accounting and financial system that includes documentation that demonstrates compliance with program regulations and the history of all procurements. 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 the 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.
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, but not limited to, actions or tasks for cost analysis, selection of procurement method, ethical standards, and other requirements, as described in this section
- Procedures for effective contract management
- Verification of third-party entity compliance with procurement regulations

The CE must retain records to demonstrate the CE has procurement procedures in place and the CE’s implementation of those procedures.

**Compliance**

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

The cost for any products and/or services that were procured improperly are unallowable costs to the school nutrition program. 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.

**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.

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


**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.