

Non-ISD Sponsoring organizations operating on a school campus

All Non-ISD sponsoring organizations wishing/planning on sponsoring a school campus/a site that is located on a school campus MUST provide a signed agreement from the appropriate District Office/District Official for each (of the) site(s) that the non-ISD sponsoring organization is submitting for approval. The agreement must confirm that the appropriate District Office/District Official has given permission for the non-ISD sponsoring organization to service the school campus/site that is located on a school campus (the agreement must include all of the school campuses/sites located on a school campus that the non-ISD sponsoring organization is submitting for approval), the program that the non-ISD sponsoring organization is allowed to operate on each of the school campus/site that is located on a school campus, and the effective date of the agreement. Please note that if the school district in question is providing the same services as proposed to be provided by the non-school entity there may be a conflict of interest and/or a possible non-compliance issue; school-districts will receive priority of service as decreed by program rules and regulations.

Per 2 CFR 200.465 Rental costs of Home office workspace A "less than-arm's length" lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between: - The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

Sponsors Must Maintain Full Control of All Sites

Sponsors MUST maintain full control of all sites under their sponsorship for the duration of their program participation. Per 7 CFR 226.2, a Sponsoring organization means a public or nonprofit private organization that is ENTIRELY RESPONSIBLE for the administration of the food program in... (affiliated or unaffiliated sites). Noted below are 13 indicators applicable to a Sponsor that has full control (CE must answer "YES" to each question below to demonstrate that the CE has full control, i.e. responsibility):

Is the sponsor fully responsible for the operation of the program in the sites it sponsors?

Does the sponsor also accept final administrative and financial responsibility for the sites they sponsor?

Does the sponsor do direct monitoring of all of their sites?

Does the sponsor have a direct role in the oversight of their sites?

Is the CE overseeing all the names at each site to ensure that no individuals are on the NDL?

Is the sponsor obtaining and maintaining the government issued identification for the principals of their sponsored sites?

Is the sponsor reviewing all the menus of the sites under these other organizations as well as ensuring the meal production records at each site are being completed?

Is the sponsor providing all of the oversight functions listed below?

- Making pre-approval visits.
- Adding, submitting changes for and terminating sites.
- Ensuring sites maintain a current license/certification and enrollment document.
- Conducting training.
- Conducting reviews.
- Providing technical assistance.
- Disbursing payments to sites.
- Ensuring sites submitted for participation are not disqualified from participation in any Child Nutrition Program, as well as ensuring site staff in principal positions or performing CACFP functions are not disqualified.

Is the sponsor providing the initial and annual training for all staff, including the staff at each site?

Does the sponsor ensure that each of their sites operate a nonprofit food service?

Is the sponsor ensuring another entity (owner of multiple sites) is not also using the CACFP funds they received from the sponsor for administrative purposes?

Is the sponsor providing unaffiliated sites to each site written documentation that details the reimbursement the site is receiving that month?

Is the sponsor ensuring that its sites follow all federal and state procurement rules and regulations for all services or products they procure?

* If a CE (who is a sponsor) appears to have a "less than full control" situation based on the information submitted via the TXUNPS application packet and/or supporting documentation, the application processor will ask the CE to answer the above noted questions and send back responses.

* If, for any of the above questions, the CE answer "NO", then the CE has failed to prove it has full control and the site(s) may not be eligible to continue their participation in the CACFP under the CE's sponsorship.

Site/Provider Transfers

Outside of the open enrollment period sponsors may not recruit nor enter into a Permanent Agreement Between Contracting Organization and Child Care Site (Child Care Center, At-Risk, Outside School Hours, Head-Start and School Campus sites)/Adult Day Care Center/Day Care Home Provider for the next program year with a site/provider that is currently participating or had participated with a sponsor in the CACFP in the current program year.

Sites/Providers that can document good cause for transferring from a sponsor may, with prior approval from F&N, enter into a Permanent Agreement Between Contracting Organization and Child Care Site/Adult Day Care Center/Day Care Home Provider at any time during the program year.

If a site/provider wants to transfer to another sponsor, the site/provider must:

Request in writing, and receive prior approval for the transfer from F&N.

Demonstrate good cause for the transfer request.

Submit a letter to its current sponsor stating the intention to terminate their agreement and the effective date of termination.

"Good cause" for transferring from the sponsorship of one sponsor to another during the program year is limited to the following conditions:

A sponsor denies a site/provider access to the program.

A sponsor reduces the level of benefit a site/provider receives under the program, for example, a sponsor: Will not allow site/provider to claim suppers or weekend meals because the sponsor does not want to monitor those meals services.

Child Care Site Sponsor requests and receives approval to withhold more than 15% of the meal reimbursement annually for allowable administrative costs thereby reducing the reimbursement received by the site.

Any other good cause as determined by TDA.

It is the site/provider's responsibility to demonstrate that such conditions exist.

EXAMPLE: A site moved to an area where the current sponsor does not provide service. When approving a transfer based on good cause, TDA will specify the earliest dates on which a new Permanent Agreement Between Contracting Organization and Child Care Site may be signed or become effective. Transfers may be approved any time throughout the program year when there is good cause. The approval granted by TDA to transfer is only effective one time. A site may not use the same transfer letter to transfer between multiple sponsors. Sponsors must submit the approval to transfer letter with all other required documentation when adding a site.

Procurement for Software and/or Software Services

CACFP Center and Day Care Home sponsors who procure for software and/or software services must follow the applicable procurement policies as outlined in Item 7000 of the CACFP Handbook for all CACFP sponsor types and the administrative policies as outlined in Item 4000 of the CACFP Handbook for Centers sponsor types. Software and software services would be items such as accounting programs, payroll programs, meal tracking software, and various other types of software such as Microsoft, Adobe, etc.

Requests to purchase software and/or software services using CACFP funds require Specific Prior Written Approval (SPWA). Such a request should be conveyed in the SPWA module in TX-UNPS. SPWA guidance can be found on www.squaremeals.org under CACFP Resources.

Software and/or software services must be paid from the sponsor's administrative percentage of the CACFP reimbursement for CACFP sponsors except for Day Care Home sponsors as noted in Item 4344 of the CACFP Child Care Centers and Adult Day Care Centers Handbook and Item 4244 of the CACFP At-Risk Handbook:

4244 (At-Risk)/4344 (Child Care Centers and Adult Day Care Centers) Limitations on Administrative Reimbursement for Sponsoring Organizations.

*A sponsor **requiring** a site to use software or services the sponsor provides must include the cost of the software or services in the allowable percentage of administrative reimbursement the sponsor can withhold each month, and cannot charge a separate amount in addition to the allowable percentage, regardless of whether the software or services are paid for out of CACFP funds or non-CACFP funds.*

Procurement procedures must be followed for new purchases, and must be implemented for existing contracts when a contract is amended resulting in a material change to the contract. Material change is defined as any change in the scope and/or terms of the contract that affects the obligations of the parties. Examples of a material change would be a change in the length of the contract, a change in the payment methodology, a change to the total amount of the contract, or any changes in the terms that differ from those outlined in the original procurement specifications.

Price remains the primary factor when procuring. If the procurement is not awarded to the lowest priced bidder, then supporting documentation must be provided to justify the selection of a higher priced bidder.

When the price of the software or software service exceeds \$50,000.00, formal procurement must be used to select the appropriate vendor. There are two main types of competitive formal procurement: Competitive sealed bids and Competitive proposals. In either case, CEs cannot allow noncompetitive practices between suppliers.

7320.3 Competitive Sealed Bids

Competitive sealed bids must be used if a purchase is more than \$50,000 and the CE, or sponsored site, can:

- Completely and accurately describe the goods or services it wants to purchase.*
- Locate two or more responsible bidders that are willing to compete for the business.*
- Award a firm-fixed price contract.*
- Choose from among bidders mainly on a price basis.*

7320.4 Competitive Proposals

Competitive proposals for purchases of \$50,000 or more should be used when the conditions for sealed bids do not exist. The competitive proposals method of procurement requires a CE, or sponsored site, to publicize a request for proposals (RFP) and solicit proposals as well. After the proposals are received, the CE or sponsored site will evaluate responsive proposals and upon award may conduct contract negotiations with two or more respondents.

When using competitive proposals, CEs must:

- Solicit proposals from an adequate number of qualified sources.*
- Publicize the RFP.*
- Honor all requests to compete as far as practical.*
- Identify all evaluation factors and their relative importance in the RFP.*
- Have a written procedure for evaluating proposals, for determining with whom they will negotiate, and for selecting the successful bidder.*
- Award contracts to the most advantageous bidder.*
- Promptly notify unsuccessful bidders.*

As a reminder, bidding entities may not develop procurement procedures on behalf of the Contracting Entity (CE) as noted in Item 7310 of the CACFP Handbook:

7310 Procurement Procedures

A CE cannot allow any entity bidding for a contract award to develop:

- Specifications.*
- Requirements.*
- Statements of work.*
- Invitations for bids.*
- Requests for proposals.*
- Contract terms and conditions.*
- Other procurement documents.*

Awarded contracts must be a fixed priced contract. Fixed price means a price that is fixed at the inception of the contract and is guaranteed for a specific period of time.

If a fixed-price contract is not an option, a cost reimbursement contract may be utilized provided the necessary conditions are met. A cost reimbursement contract is a contract that provides for payment of allowable incurred costs, to the extent prescribed in the contract. These types of contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed without the approval of the CE. Cost reimbursement contracts are only allowable when:

- Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract; or
- Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

In the event a cost-reimbursement contract is required, the CE shall document the rationale for selecting the contract type in the written acquisition plan.