Section 16a

Contract Management

Section 16a, Contract Management

Update Guide	
June 8, 2026	Replaced references to *ARM Section 14a, USDA Foods Processing*. This section has been removed from the ARM and renamed to the "USDA Foods Processor Handbook." The handbook is located under *Policy/Handbook* on the *Food Distribution Program for Child Nutrition Programs* landing page on SquareMeals.
March 11, 2026	Updated guidance on contract and renewal term limits.
August 4, 2023	Corrected broken weblink.
May 19, 2023	Created new *Definitions* and *Contact Information* sections, located at the beginning of the *Administrator's Reference Manual (ARM)*. Removed definitions and contact information from this section.
July 28, 2022	Clarified information on the following topics: - Definitions
August 16, 2021	Updated *Section 16a, Contract Management* to correct minor typos. Clarified information on the following topics: - Contract duration - Definitions
August 12, 2020	Created *Section 16a, Contract Management* and updated the *Administrator's Reference Manual (ARM)* sections references. Guidance for this new section was taken from the *Administrator's Reference Manual (ARM), Section 17, Procurement*.

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Contract Management

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

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

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

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

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

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

Information Box 1

Additional Resources for Procurement

Texas Comptroller of Public Accounts

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

Resources include the following:

- *State of Texas Contract Management Guide*—guidance and recommendations on improving existing contract management methods and practices. Available at *www.comptroller.texas.gov/purchasing/publications/contract-management-guide.php*

Texas Education Agency (TEA)

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

United States Office of Management and Budget (OMB)

2 Code of Federal Regulations, Part 200—These regulations provide detailed information on required federal procurement process. Available at *https://www.rd.usda.gov/regulationsguidelines/2-cfr-200*

Written Procurement Procedures Related to Contract Management

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

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

Program Integrity and Internal Controls

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

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

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

Responsibility for Contract Implementation

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

Information Box 2

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

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

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

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

Conflicting Program Regulations

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

Education Department General Administrative Regulations (EDGAR)

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

Effective Management of Contracts and Agreements

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

The CE must have written procedures[1] for contract management.
Contract management includes, but is not limited to, the following:

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

Additional Purchase beyond the Quantity Expressed in the Solicitation and Contract

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

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

Material Change

In the solicitation, each product and/or service to be purchased has a description which includes the quantity to be purchased. The purchase of an additional product and/or service beyond the quantity expressed in the solicitation and contract (i.e., added to an existing contract or piggybacking) may constitute a material change and may result in unallowable costs.[2] CEs should exercise caution when purchasing any additional products and/or services from a vendor that is not included in the original solicitation and contract.

Market Basket

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

Additional Purchase of Already Procured Items from Another Source

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

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

Off Contract Purchases

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

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

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

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

Bonding Requirements (if required)

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

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

Buy American

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

- Apply the Buy American requirements to all food purchases.

  Purchased Made on Behalf of the CE

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

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

Consultant Contracts

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

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

Contingency Approval

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

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

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

Cooperative Purchasing

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

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

  Cooperative Fee

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

- Establish a routine schedule to review documentation provided by the cooperative to ensure that the CE receives all credits, discounts, and rebates for all procurements conducted on behalf of the CE by the cooperative.

- Establish a routine schedule to review documentation provided by the cooperative (or vendors) to ensure that the CE receives all USDA Foods values for processed end products.

- Establish a routine schedule to review documentation to ensure that the CE receives credit for all vendor fees collected beyond the cost for providing services stipulated in the cooperative agreement.

Credits, Discounts, and Rebates and USDA Foods Values

For additional guidance on this topic, see the *Administrator's Reference Manual (ARM), Section 14, USDA Foods;* the *USDA Foods Processor Handbook*[3]*; Section 17, Procurement;* and *Section 18, Food Service Contracts.*

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

  Audit Clause

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

  Inability of Contractor to Meet Terms and Conditions for Crediting

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

[3] Located under the *Food Distribution Program for Child Nutrition Programs* landing page on SquareMeals.

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

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

Duration of Contract

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

– Ensure the length of the contract is applied correctly.

Consolidation

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

Contract/Renewal Duration Period

Contracts for Food Service Management Companies (FSMCs), vended meals, and consultants MUST include a contract limit of no more than **one year plus four annual renewals.** For detailed information, see *Administrator's Reference Manual (ARM), Section 18, Food Service Contracts*.

All other contracts must have a duration of **no more than five years** (including annual renewals, if applicable). These contracts may have different combinations of contract and renewal term lengths—for example, two years plus three one-year renewals, or five years and no renewals.

Renewal Options

A solicitation and contract may contain a renewal clause that allows a certain number of one-year renewals. Each contract renewal period cannot exceed one year.

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

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

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

Food Product Documentation

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

- Review documentation provided by the contractor to ensure that the CE is able to demonstrate that food products, including commercially prepared products, meet the meal pattern or competitive food standards.[4]
- Review invoices and food product labels to ensure that the food items are sourced as required by the Buy American provisions.

Food Safety

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

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

Franchise Agreements (If Applicable)

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

- Ensure that the specifications, technical requirements, and terms and conditions of franchise agreements are followed.
- Ensure that equipment purchases made with food service funds are properly procured.

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

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

Invoicing and Payments

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

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

- Review invoices or cost statements routinely to ensure that invoices or cost statements indicate how and when all discounts, rebates, credits; USDA Foods values; and other applicable credits are given to the CE.

  [NOTE: CEs may include a requirement for a routine auditing procedure as defined in the solicitation.]

- Ensure that invoices or statements provide the following information for each cost submitted for payment:
  1. Cost that is allowable and may be paid from the nonprofit food service account and
  2. Cost that is unallowable and must be paid from sources other than the school nutrition food service account.
- Ensure that all products and/or services invoiced correlate to the actual products and/or services received.
- Ensure that an adjustment or escalation clause is applied both upward and downward in alignment with the index at the frequency, as described in the solicitation and contract.[5]
- Review invoices prior to payment, including verifying information included on invoices to determine if costs are allowable.
- Ensure that the CE is not invoiced for or pays for duplicative services.

Modifications to the Cost of a Renewable Contract

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

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

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

Modifications to a Renewable Contract, Flexibility for Anticipated Changes

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

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

  Anticipated Growth

  CEs may include the possibility of an increased or decreased number of products and/or services as long as the increase or decrease is reasonable and is clearly outlined in the solicitation and contract. Commonly, this type of option is used (1) to communicate anticipated growth or decline in student population and participation at a specified site or sites or (2) to add or remove a Child Nutrition Program (CNP) at all sites or specified sites.

  Material Change

  If the growth exceeds what is described or is not included in solicitation and contract, it is likely a material change.[6] When there is a material change, the contract must be rebid.

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

  Piggybacking

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

Other Regulatory Requirements

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

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

Ownership of Equipment or Software

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

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

Professional Certification and Professional Development (As Required)

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

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

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

- Review documentation to ensure that contractor staff have met the professional development training standards as required by regulations and as described in the solicitation and contract.

Specifications, Technical Requirements, and Terms and Conditions

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

- Ensure that all products and/or services and the scope of work[7] provided under the contract match the specifications, technical requirements, and terms and conditions of the awarded contract.
  - Are representative of the products and/or services to be delivered, as described in the solicitation and the contract—specifications, technical requirements, and terms and conditions.
  - Are delivered according to the timelines specified in the contract.
  - Are priced as quoted.

Contract Disputes

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

Documentation

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

Procedures

When there is a dispute between the CE and the contractor, the CE must follow its written procedures[8] and term and conditions of the contract to resolve the dispute. This will include, but is not limited to, the following actions:

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

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

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

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

Termination/Non-Renewal of a Contract

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

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

Future Contracts

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

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

Third-Party Contracts Procured on Behalf of the CE

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

- Establish a routine process to review documentation routinely to ensure that the third-party contractor acts in the best interest of the CE.[9]
- Establish a routine process to review procurement documentation to ensure that all products and/or services procured by a third-party entity acting on the CE's behalf are procured according to USDA requirements.
- Monitor the amount of collected vendor fees, or similarly applied collections, that exceed the agreed upon costs for providing the CE with products and/or services is refunded to the CE.
- Monitor credits, discounts, and rebates and USDA Food values to ensure that they are received and applied as income in the nonprofit school food service account.
- Ensure that all third-party contractors adhere to the federal guidelines for real or apparent conflicts of interest, including, but not limited to, the following:

  Unallowable Contracts

  - Not allowing the third-party contractor to procure products and/or services from the third-party's parent company, subsidiary of the parent company, or other entities with the financial relationship to the third party.
  - Not allowing the third-party contractor to provide information, documents, or contributes for a solicitation the third-party plans to respond to with an offer.

[9] TDA recommends review take place at least quarterly.

- Ensure that no third-party contract provides duplicative services that are also provided in another contract or third-party contract/agreement the CE has in place.
- Establish a routine process to review all documentation to ensure that the third-party contractor provides all needed documentation for the CE to demonstrate compliance.

USDA Foods

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

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

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

Contract Protests

The CE is responsibility to ensure that all contract protests are resolved. The CE and any entity acting on their behalf must follow the CE's written procedures[10] to resolve protests. An interested party[11] may protest any of the following situations:

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

The CE and any entity acting on their behalf must retain all documentation related to protests, and the CE must notify TDA when a protest is received.[12]

[10] See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional information on this topic.
[11] An *interested part* is defined as *any entity or person who may be affected by a situation, any entity or person who has a real or direct interest in action being proposed or taken.*
[12] See the *Contract Information for the Texas Department of Agriculture (TDA), Food and Nutrition,* which follows the table of contents for information on contracting TDA.

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

- The contract was made in connection with the School Nutrition Program (SNP).
- The protestor has exhausted all administrative remedies with the CE and any entity acting on the CE's behalf (grantee and subgrantee) before pursuing the protest with FNS.
- Violations of federal law or regulations and the standards of this section exist.[13]
- Violation of a CE's or entity acting on CE's behalf (grantee or subgrantee) protest procedures exists for failure to review a complaint or protest.

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

Additional Resources

TDA Resources

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

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

Institute for Child Nutrition (ICN)

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

[13] Violations of state or local law will be under the jurisdiction of state or local authorities.

Other Websites

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

Records Retention

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

Information Box 3

Records Retention

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

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

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

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

Third-Party Contracts

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

Duplicative Services

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

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

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

- Additional purchases beyond the quantity expressed in the solicitation and contract
  - Explanation for why the costs of additional purchases are allowable
  - Rebid documentation
- Bond
  - Proof of bond
  - Notice to contractor to release bond

- Buy American
  - Product labeling that includes the county of origin for food products
  - Documentation of CE notification to contractors
  - Documentation of CE review of required elements when an exception is granted
- Consultant Contract
  - Documentation demonstrating duration of contract, including contract renewals
  - Documentation of why a short-term or temporary consultant is needed
  - Explanation/expectation of consultant service timeline
- Cooperative Purchasing
  - Written agreement which includes, but is not limited to, membership and roles responsibilities, purchasing protocols, cost of services, timelines, and method for of providing credits, discounts, and rebates, and USDA Foods values.
  - Invoices demonstrating cost and repayment of fees if appropriate.
  - Documentation of payment for all credits, discounts, and rebates and USDA Food values.
- Credit, Discounts, and Rebates and USDA Food Values
  - Audit report results if an audit clause is included in solicitation and contract
  - Documentation of payment for all credits, discounts, and rebates and USDA Food values
- Duration of Contract
  - Proof of contract length and number of renewals
  - Rebid documentation
  - Documentation of payment for all credits, discounts, and rebates and USDA Food values
- Food Product Documentation
  - Documentation of food item country of origin, meal pattern contributions, and competitive food compliance
- Food Safety
  - Health inspection forms
  - Requests to health inspectors
  - HACCP plans and training documentation

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

Compliance

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

The cost for any products and/or services that were procured improperly are unallowable costs to the school nutrition program.[14] 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.

[14] An unallowable cost or expense cannot be paid using school nutrition program funds.

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

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

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

Criminal Penalty

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

Fraud

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

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

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