Section 17a

Procurement Procedures

Section 17a, Procurement Procedures

Update Guide

August 13, 2026	Removed URL to the Texas Comptroller's *Model Purchasing Manual for Texas Cities and Counties*. This document is no longer available, and the URL is now managed by an entity other than the Comptroller. **CEs are advised not to open the URL that remains on any previous version of this section.**
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 regarding FNS Instruction 113-1 in accordance with CRD 01-2026.
September 2, 2025	Clarified the following guidance: - Written Procurement Procedures (Small Purchase)
August 4, 2023	Clarified the following guidance: - Contract Awards - Contract Solicitation
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 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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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 is 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 15, Program Integrity*
- *Section 16, Financial System*

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 *www.fns.usda.gov/es/node/73141*

- *Section 16a, Contract Management*
- *Section 17, Procurement*
- *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*

Program Integrity and Internal Controls

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.

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 16, Financial System.]

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).

Written Procurement Procedures

CEs are required to have written procurement procedures that reflect applicable local, state, and federal regulations that include,

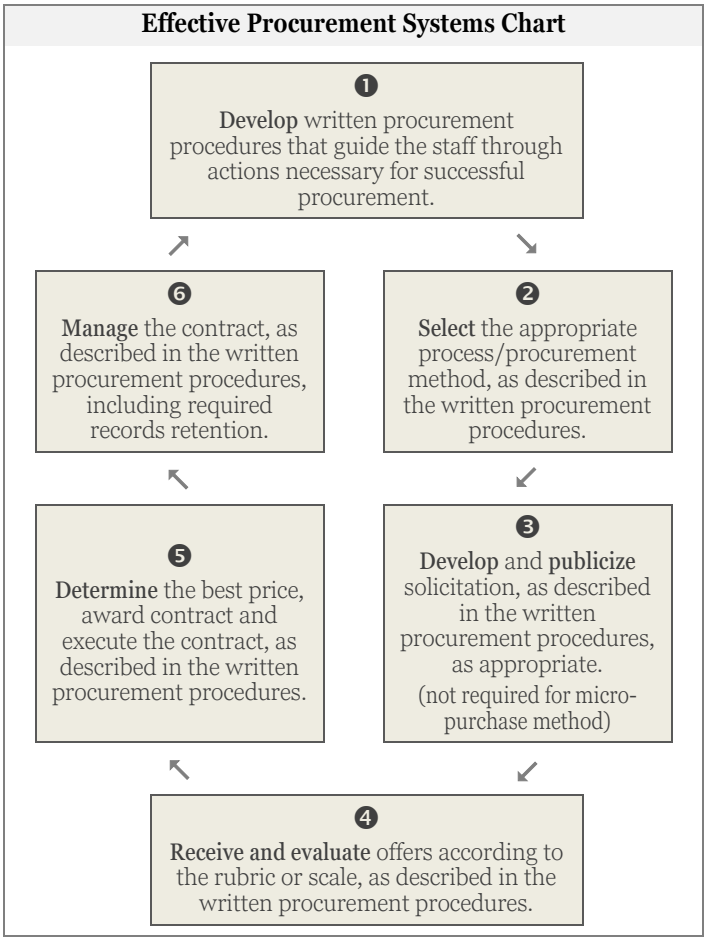
but are not limited to, checks and balances that provide internal controls for all financial matters.

> 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 procurement method, as described in the written procurement procedures (not required for the micro-purchase method).
3. Develop and publicize the solicitation as described in the written procurement procedures, as appropriate.
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.[1]
- 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.

[1] See *Administrator's Reference Manual (ARM), Section 17b, Buy American* for additional information on this topic.

If a third-party contractor does assist in the development of a solicitation, the third-part 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.
- 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 for formal procurements, including determining the most responsible[2] 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.][3]

- Timeline for creating solicitations for each purchasing method.
- Guidelines for developing the evaluation criteria for formal procurements 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 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.

[2] With a documented history, a CE may choose not to award a contract to the most responsive and responsible offer.
[3] See the *Additional Resources* subsection in this section for additional tools to assist with micro purchases and small purchases.

- 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.
- 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; and the Americans with Disabilities Act.

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.[4]
- Strategies for equitable distribution for micro-purchases.

Small Purchase

- Strategies for identifying possible suppliers and obtaining quotes from at least two potential suppliers.[4]
- Processes for requesting offers, including a 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*.

- *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.

[4] See *Section 17, Procurement* to assist with micro purchases and small purchases.

- *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*
- *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*

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*

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*
- USDA Farm to School website, available at *www.fns.usda.gov/farmtoschool/*

Records Retention

The CE is required to maintain an organized accounting and financial system that includes documentation that demonstrates compliance with program regulations 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.

Information Box 4

Records Retention

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

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

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.[5] 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.

[5] 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. (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.