Section 17c

Cooperative Purchasing

Section 17c, Cooperative Purchasing

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.
February 14, 2025	Clarified the following guidance: - Third-Party Cooperatives (Formal Procurement)
May 19, 2023	Clarified the following guidance: - Adding Parties to a Contract (Piggybacking) - Interlocal Agreement (Cooperative Agreement or Contract) - Off-Bid Purchases - Procurement - Program Integrity and Internal Controls - Records Retention - Type of Cooperatives - USDA Foods 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.
September 29, 2022	Clarified the following guidance: - Catalog purchasing - USDA Foods: credits, rebates, and discounts
July 28, 2022	Clarified the following guidance: - Definitions

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Cooperative Purchasing

The guidance in this section is intended to assist contracting entities (CEs) who participate in purchasing cooperatives that allow CEs to take advantage of economies of scale[1] and reduce program costs.

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*
- *Section 16a, Contract Management*
- *Section 17, Procurement*
- *Section 17a, Procurement Procedures*
- *Section 17b, Buy American*
- *Section 18, Food Service Contracts*
- *Section 23, Food Product Documentation*
- *Section 26, Food Safety*
- *Section 27, Professional Standards*
- *Section 30, Records Retention*

The guidance in this section also applies to contracts for consultants, food service management companies (FSMCs), and vended meals. However, there is additional guidance specific to these types of contracts located in *Administrator's Reference Manual, Section 18, Food Service Contracts*.

Procurement

Any entity contracted to purchase on behalf of a CE for SNP programs is required to follow federal procurement standards.

[1] By joining together and compiling their total number of purchases, CEs get a better discount based on the increased number of product purchases—an economy of scale.

If a CE contracts with an entity to perform purchasing, the CE must ensure it has adequate documentation to determine if procurement regulations have been implemented appropriately, including, but not limited to, documentation related to credits, rebates, discounts, and USDA Foods values.

Administrator's Reference Manual (ARM), Section 17, Procurement provides detailed guidance on procurement requirements.

Procurement Procedures
CEs must include the use of cooperatives in their written procurement procedures, if applicable. Procurement procedures are intended to promote program integrity and establish internal controls. See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional information on procurement procedures.

Conflicting Program Regulations
Any procurement utilizing CNP funds must adhere to USDA procurement regulations. See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on conflicting regulations, including when USDA regulations conflict with *Education Department General Administrative Regulations (EGDAR).*

Program Integrity and Internal Controls

Procurement activities must promote program integrity and establish internal controls. This includes all procurement activities from the solicitation through management of the contract.

> 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.

The use of internal controls assists CEs in developing an effective financial management system that provides safeguards to ensure the stewardship of federal money and reduce fraud and improper payments. Internal controls must be incorporated into all procurement activities, including cooperative purchasing, to ensure program integrity.

Costs resulting from improper procurement are unallowable expenses. **Unallowable expenses must not be paid by Child Nutrition Programs (CNPs).**

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

USDA Foods

Cooperatives must provide members with all applicable credits, rebates, discounts, and USDA Foods values.

Additional guidance on USDA Foods and processing is found in:

- *Administrator's Reference Manual (ARM), Section 14, USDA Foods*
- *USDA Foods Processor Handbook*[2]

Interlocal Agreement (Cooperative Agreement or Contract)

CEs may join or form cooperative purchasing groups for procurement on behalf of their members. The CE must have a written interlocal (cooperative) agreement, participation

[2] Found on the *Food Distribution Program for Child Nutrition Programs* landing page on SquareMeals, under "Policy/Handbook."

agreement, or contract (collectively here, "agreement") to participate in the cooperative. If the agreement includes services outside of the scope of the CNPs, it must include a section specific to the CNPs.

The agreement or section of the agreement specific to the CNPs must include the following elements:

- Roles and Responsibilities—Roles and responsibilities for all members and the entity administering the cooperative, including, but not limited to, reporting, ordering process, and lead school (if applicable). This section must include the following statement:
    - "All members are responsible for ensuring the cooperative operates in accordance with USDA Procurement standards. Individual members will not use Child Nutrition Program funds to pay invoices for goods or services that were improperly procured."
- Fees or Costs—
    - Description of the amount of fees or costs to be charged for services, including vendor fees and membership fees as applicable. This should include the fee structure and how fees are used to cover administrative costs.
    - Description of when fees are collected and when financial reports will be distributed to members.
    - Description of frequency of invoicing to determine amount of fees collected by the cooperative. This must include distribution of documentation that allows for the CE to reconcile charges. At a minimum, reconciliation must be completed annually, but TDA recommends completing it quarterly.
- Returning Funds to Members—Description of how and when any funds in excess of administrative costs incurred for USDA Foods. TDA recommends that reconciliation and return of funds owed to the members occur at least quarterly.
- Membership Changes—Description of requirements for adding and removing members.
  [NOTE: If the agreement includes an option for new members, the possible increase in quantity for orders may be a material change[3] to the awarded contract unless the solicitation and contract include a description of the anticipated increase in quantity based on a reasonable anticipation of growth.]
- Procuring on Behalf of the Members—Statement that all procurements will be conducted according to USDA regulations.
- USDA Foods –
    - Description of how the cooperative will manage and return any credits, rebates, and discounts of USDA Foods, to include processing.
    - Description of how and when all credits, rebates, discounts, and USDA Food values collected by the cooperative will be paid to the members. TDA recommends that reconciliation and return of funds owed to the members is completed at least quarterly.

Management of the Agreement

The CE is responsible for managing the agreement and must ensure that the cooperative is operated according to the applicable rules and guidance. This includes, but is not limited to:

[3] See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on material change.

- Cost Analysis—Documentation must be provided by the cooperative to the CE to ensure cost is determined reasonable prior to procurement. The CE is responsible for ensuring the cost analysis is completed. The cooperative may conduct cost analysis on behalf of the CE and must clearly communicate the procurements for which they will complete the analysis. When the cooperative does not complete the cost analysis for an applicable procurement, the CE is responsible for completing it. See *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on cost analysis.
- Credits, Discounts, or Rebates—Documentation must be provided to the CE by the cooperative to reflect all credits, discounts, and rebates for procurements conducted on behalf of the CE by the cooperative.
- USDA Foods— Documentation must be provided by the cooperative (or vendors) to the CE to reflect all USDA Foods values for processed end products are applied to processing invoices.
- Vendor Fees— Documentation must be provided to by the cooperative to the CE to demonstrate the CE is credited for all vendor fees collected beyond the cost for providing services stipulated in the cooperative agreement.

Further, the CE should review the agreement annually to ensure the cooperative is functioning as written and to determine if any updates are needed.

Type of Cooperatives

In procurement regulations, there are two types of cooperatives: (1) Operator-Only Cooperatives[4] and (2) Third-Party Cooperatives.[5]

A CE may belong to more than one cooperative. If the CE has membership in more than one cooperative, the CE must ensure that it establishes a protocol for the types of items or services to purchase from each cooperative, and that it does not contract for duplicative services. See the *Individual CE Purchases through an Operator-Only Cooperative* subsection in this section for additional guidance on this topic.

Type 1: Operator-Only Cooperatives

Any type of agreement that is formed solely among Child Nutrition Program (CNP) operators, including regional education service center (ESC) cooperatives.

Establishment

This type of cooperative does not have to be procured. However, CEs must initiate the creation of these types of cooperatives or, in the case of purchasing cooperatives that operate through a Texas ESC, be established by state law and regulation to procure on behalf of specific entities—public school districts and charters.

Membership in this type of cooperative cannot be solicited.

ESC Cooperatives

ESC cooperatives function as nonprofit entities and may enter into interlocal agreements for cooperative purchasing with public school districts and charters.

Though TDA contracts with ESCs to provide CEs with training and

[4] Operator in this section means *an entity that operates a Child Nutrition Program*

[5] USDA released updated guidance in *USDA Memo SP 05-2017, Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third-Party Services* on October 19, 2016. This memo supersedes *USDA Memo SP 35-2012, Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.*

assistance for the Child Nutrition Programs (CNPs), TDA cannot contract with ESC cooperatives. The CE is responsible for managing their interlocal agreement with the cooperative and ensuring the cooperative's compliance with all CNP regulations and requirements. As such, any noncompliance is the responsibility of the CE.

Fees

Operator-only cooperative membership may include a fixed fee to cover administrative costs as specified in the agreement. A cost-plus percentage of cost fee is not allowable in the CNPs.

For USDA Foods, cooperatives may only collect fees equal to the costs for the activities associated with the procurement diversion of truckloads and management of activities related to the CNP. Cooperatives must provide financial documents (itemizing revenue and expenses (including staff time allocation) related to USDA Foods tracked separately) to the CE.

All profits made on USDA Foods in excess of administrative costs must be returned to the CE.

Vendor Fees

A cooperative may use transaction or vendor fees to cover administrative costs (i.e., purchasing on behalf of the CE, providing documentation, etc.).

A cooperative membership agreement may allow the cooperative to deduct administrative costs from vendor fees and pay any remaining amount to members on a regular basis.[6] Each cooperative member is responsible for ensuring that it receives credit for the remaining amount. Each cooperative member must retain documentation that demonstrates that the remaining amounts are paid to the CE's nonprofit food service account.

Agents Procured by Operator-Only Cooperative

Members of operator-only cooperatives may competitively procure an agent to manage the cooperative's services or to procure on behalf of the cooperative members. Members may pay a fee to a third-party agent for these services. The fee must be established in the solicitation and contract.

When Membership Fees Are Used: If the fee is prepaid, and the cost of services provided by the agent is less than the fee, the remaining fees must be returned to the members. The agent must provide members with documentation demonstrating the use of fees and the payment of any remaining fees to the members. Each cooperative member is responsible for ensuring that it receives credit for the remaining amount. Each cooperative is also responsible for retaining documentation that demonstrates the CE has been credited properly for remaining amounts and providing documentation demonstrating accuracy of payments to the CE.

When Transaction or Vendor Fees Are Used: An agent procured by an operator-only cooperative may also be paid through the use of

[6] TDA recommends that cooperatives communicate this information and make payments on remaining amounts on a quarterly basis.

transaction or vendor fees. Credits for transaction or vendor fees are classified as income to the CNP and must be credited to the CE's nonprofit school food service account.

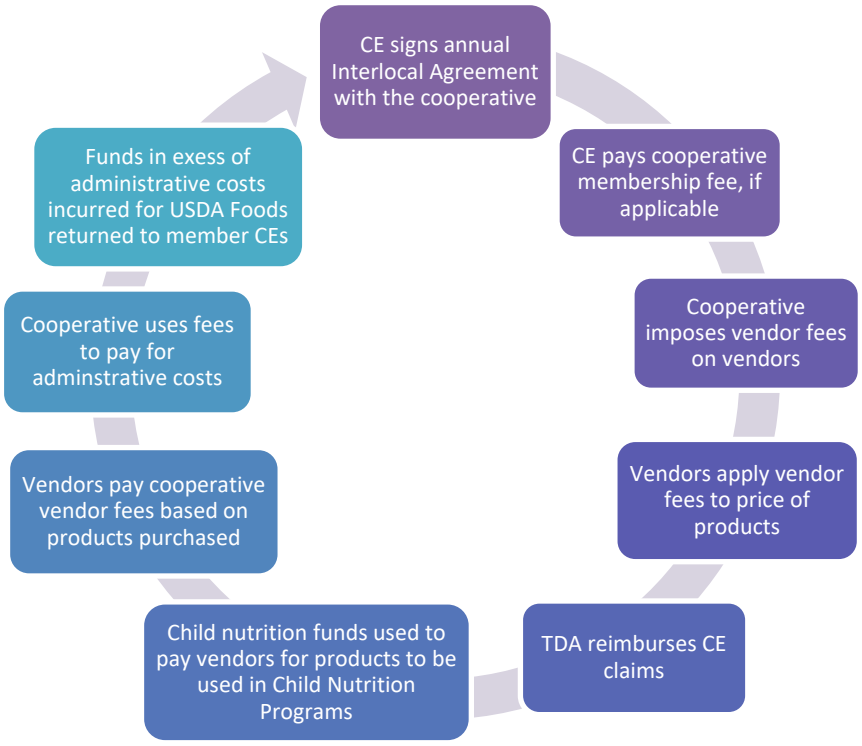
However, a cooperative membership agreement may allow the agent to deduct the administrative costs from the fees and pay any remaining amount to members on a regular basis.[7] Each cooperative member is responsible for ensuring that it receives credit or reimbursement for the remaining amount (excess funds). Each cooperative must retain documentation that demonstrates that the remaining amounts are paid to the CE.

Profits (Excess Funds)

Operator-only cooperatives are intended to help CEs make purchases that result in the most cost-effective use of federal funds. At the end of the contract year, the cooperative must return all funds in excess of administrative costs incurred for USDA Foods. Each cooperative member is responsible for ensuring that it receives credit for the remaining amounts. Each cooperative is also responsible for retaining documentation that demonstrates the CE was credited properly for remaining amounts and was provided documentation demonstrating accuracy of payments.

Cycle of Funds

The following graphic shows how membership fees and vendor fees are typically applied to the purchasing cycle of nonprofit cooperatives.



Procurement

Cooperative purchases must follow (1) all USDA procurement regulations and (2) State and local procurement requirements if more restrictive as long as these

[7] TDA recommends that procured agents communicate this information and make payments on remaining amounts on a quarterly basis.

regulations are not in conflict with USDA regulations. While the cooperative prepares the procurement on behalf of the member CEs, each CE is still responsible for purchasing and retaining documentation that purchases are compliant with all regulations.

Conflict of Interest, Operator-Only Cooperative

In procurement, all involved must avoid conflicts of interest that inhibit proper procurement practices.

USDA also prohibits third-party contracts that procure products or services from a third-party's parent company, subsidiary of the parent company, or other entities with a financial relationship to the third-party. This includes an FSMC purchasing from FSMC-owned or affiliated vendors. These types of situations represent a real or apparent conflict of interest, limit competitive procurement, and result in school nutrition funds to be used to pay for duplicative services.[8]

An agent, agent's parent company, or subsidiary company of the parent company or the agent publishing a solicitation on behalf of a CNP operator (or CNP operator-only cooperative) cannot respond to this solicitation. Responding to this solicitation would constitute an unfair advantage and be in violation of federal procurement requirements. As such, any associated costs would be unallowable to the CNPs.

Operator-Only Cooperative Contracts with a Third-Party

If an Operator-Only Cooperative engages a third-party contractor or agent to manage or purchase products and/or services on behalf of the Operator-Only Cooperative, the third-party must be procured in a manner consistent with all USDA regulations and guidance.

- Any added purchases or services provided by a third-party that are not procured properly may create a material change. [9]
- Any products and/or services that are not procured properly may result in unallowable costs.[10]

Price for Operator-Only Cooperatives

A price based on a cost-plus percentage of cost is not allowed for any purchases made on behalf of CEs by an Operator-Only Cooperative. Any costs charged from this type of pricing structure are unallowable costs to a CNP.

Vendor List for Product Pricing for Operator-Only Cooperatives

In specific circumstances, an Operator-Only Cooperative may award a bid to a group of approved produce vendors with the intention that each CE will order products and/or services through an *on-demand* method or request. To be allowable, the solicitation must include specifications and/or technical requirements that establish reasonable total estimated cost and quantities (cost analysis and forecasting) of the products and/or services to be purchased. By describing the total cost and quantities in the

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8 See *Administrator's Reference Manual (ARM), Section 15, Program Integrity* for additional information on conflicts of interest.

9 See the *Material Change* topic located in the *Administrator's Reference Manual (ARM), Section 17, Procurement* subsection in this section for additional information on this topic.

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

solicitation, all potential offerors know what is being solicited and are able to offer CEs the most cost-effective pricing.

When a vendor list is used, the solicitation must also clearly state that a vendor list will be used and must describe the actions a vendor must take to be approved to be on the list. This includes an option for vendors to achieve approval after the solicitation has been released, but before the due date for offers. When CEs use a vendor list, they must ensure that the use of the list does not limit competition.

Individual CE Purchases through an Operator-Only Cooperative

Even if a CE joins a cooperative, the CE is not required to make all of its purchases through the cooperative—the CE may decide to purchase select products and/or services outside of the cooperative if it is in the best interests of the CE or program as long as the CE has not indicated that the CE will purchase the items through the cooperative.

However, if the CE has agreed to purchase specific products and/or services through the cooperative, the CE cannot later decide to purchase these products and/or services from another source until the quantity or amount the CE agreed to purchase through the cooperative is exhausted.

Type 2: Third-Party Cooperatives

Any type of cooperative agreement that is formed by sources that are external to CEs (i.e., not operator-only cooperatives) 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, are conducted for State facility needs using State procurement standards. These agreements allow local educational agencies and other Child Nutrition Program (CNP) operators that are governmental entities to purchase from the State's contracted sources. This type of cooperative includes, but is not limited to, state agency cooperatives.

Interagency Agreements

Public, private, and nonprofit entities formed for the purpose of procuring goods and services. This includes, but is not limited to, county buying groups and education technology hubs.

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.

Establishment

The fee a CE pays to join or participate in a third-party cooperative is typically charged to allow the CE to gain access to a price list of products and/or services. **For the CE to use these services, the services of the third-party cooperative must be properly procured.**

Fees

CEs may pay a fee to cover administrative costs for third-party cooperatives. These fees must be specified in the agreement. These fees do not constitute a competitive procurement. A cost-plus percentage of cost fee is not allowable for any type of fee structure—any costs charged from this type of pricing structure are unallowable costs to a CNP.

Procurement

All purchases made through a third-party cooperative must meet USDA procurement regulations. The CE must determine whether the third-party cooperative follows USDA procurement regulations **before** any purchase is made. *Administrator's Reference Manual (ARM), Section 17, Procurement* provides detailed guidance on procurement requirements.

When purchases are made through a third-party cooperative, the price must be the primary consideration for awarding a contract or making a purchase. A price based on a cost-plus percentage of cost is not allowed for any purchases made on behalf of CEs by a third-party cooperative. Any costs charged from this type of pricing structure are unallowable costs to a Child Nutrition Program (CNP).

The following guidance must be applied to procurement through third-party cooperatives:

- Micro-Purchase Method: If the purchase amount is equal to or less than the micro-purchase threshold, the product or service may be procured from a third-party cooperative using a micro-purchase method as long as the micro-purchase requirements met. This includes the equitable distribution of purchases.

  A membership fee that is equal to or less than the micro-purchase threshold may be a micro-purchase. It is the CE's responsibility to retain documentation that demonstrates the CE's compliance with the micro-purchase requirements.

- Small Purchase Method:

  - If the third-party cooperative **follows USDA procurement regulations** for small purchases, the CE may make purchases through the third-party cooperative without additional procurement actions. It is the CE's responsibility to retain documentation that demonstrates that the third-party cooperative follows USDA procurement regulations for products and/or services procured. The records may include, but are not limited to, the solicitation and contract, advertising documentation, and written procedures.

  - If the third-party cooperative **does not follow USDA procurement regulations**, the CE may consider the price from the third-party cooperative as one source of pricing. In these cases, the CE must obtain additional competitive offers.

    After obtaining additional offers, the CE will evaluate the price from the third-party entity and the additional offers. Then, the CE will purchase the most responsive and responsible offeror with price as the primary consideration. It is the CE's responsibility to retain documentation that demonstrates the CE's compliance with the required procurement process.

- Formal Procurement Method:
  - If the third-party cooperative **follows USDA procurement regulations** for formal method purchases, the CE may make purchases through the third-party cooperative without additional procurement actions. It is the CE's responsibility to retain documentation that demonstrates that the third-party cooperative follows USDA procurement regulations for products and/or services procured. The records may include, but are not limited to, the solicitation and contract, advertising documentation, and written procedures.
  - If the third-party cooperative **does not follow USDA procurement regulations**, the CE may only consider it a source of information for a solicitation. The CE must still conduct a formal procurement that meets USDA procurement requirements. It is the CE's responsibility to retain documentation that demonstrates the CE's compliance with the required procurement process.

Catalog Purchasing and Subscription Services

This type of Group Purchasing Organization (GPO) typically requires a membership fee for access to the GPO's price list of products and services from various vendors. It does not guarantee that the products or services offered were procured according to USDA procurement regulations. The CE must ensure that all purchases meet USDA procurement regulations; if the CE determines that the GPO does not follow USDA procurement regulations, the CE must conduct the appropriate USDA procurement regulations to purchase the product or service.

Individual CE Purchases

Even if a CE joins a cooperative, the CE is not required to make all of its purchases through the cooperative—the CE may decide to purchase select products and/or services outside of the cooperative if it is in the best interests of the CE or program as long as the CE has not indicated that the CE will purchase the items through the cooperative.

However, if the CE has agreed to purchase specific products and/or services through the cooperative, the CE cannot later decide to purchase these products and/or services from another source until the quantity or amount the CE agreed to purchase through the cooperative is exhausted.

Off-Bid Purchases

When a CE plans to purchase products or services not listed on the contract from an awarded vendor, this is considered an "off-bid purchase" and requires a separate procurement method be used: micro, small, or formal purchase.

However, if the CE determines that adding the purchase of a limited number of products to a current contract would be advantageous, the CE may do so if the following conditions are met:

1. Solicitation and Contract

   The option to add additional, "off-bid" products must be included in the original solicitation and contract as a specific percentage of the estimated value of the contract, as described in the chart below. USDA recommends limiting additional costs to 5-10% of the estimated value of the contract.

Allocation of Purchases by Percentage of the Estimated Contract Value of the Original Contract Chart				
Items Listed in Solicitation and Contract	➡	Percentage of Total Estimated Value Original Contract		
Off-Bid Items Added to Original Contract List	➡	Percentage of Total Estimated Value of Original Contract		
Items Listed in Solicitation and Contract	+	Off-Bid Items Added to Original Contract List	=	100 % of Total Estimated Value of Original Contract

2. Value of Off-Bid Products Exceeds Percentage Specified in Solicitation and Contract
   On an existing contract, the purchase of any additional products that exceeds the percentage specified in the solicitation and contract is an unallowable cost. USDA recommends limiting additional costs to 5-10% of the estimated value of the contract. If the value for the added products exceeds the percentage specified in the solicitation and contract, a separate procurement for those products must be conducted.

3. Contract Renewal
   The option to renew a contract must be indicated in the original solicitation and contract.
   - The original solicitation and contract's specified percentages for listed and added products apply to all renewal contracts.
   - Instead of using the contract's estimated total value for renewal years, the percentages are applied to the contract's actual total cost for the previously completed contract year.

Adding Parties to a Contract (Piggybacking)

When adding parties to a contract, known informally as "piggybacking," the contract must have been procured in compliance with USDA regulations. Contracted parties considering additional parties must include a provision allowing "piggybacking" in their contracts to avoid creating a material change. If such a provision is not included in the contract and a material change is determined, a new competitive procurement is required.

For a contract containing such provisions, language should be included specifying applicable limitations of the extension (e.g., dollar value or the number of additional parties that may be added). Such contracts should be thoroughly reviewed by members to ensure they meet their needs and conform to all applicable program requirements.

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 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.

Records of Procurement Procedures and Contract Management

The CE must retain 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.

See *Administrator's Reference Manual (ARM), Section 15, Program Integrity; Section 16a, Contract Management; Section 17a, Procurement Procedures;* and *Section 17b, Buy American* for additional information on documentation.

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 CNP.[11] 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.

The percentage allocated for added products in the solicitation and contract cannot e

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.