

Crosswalk

School Nutrition Program (SNP) Procurement and Texas Public Education Procurement

United States Department of Agriculture (USDA) and
Texas Department of Agriculture (TDA)

United States Department of Education (USDE) and
Texas Education Agency (TEA) Guidance

Funding Source

USDA

USDE and TEA

Charter School Purchasing

[USDA]

Charter school purchasing must meet all SNP federal and state requirements for procurement.

[Texas Law]

Charter school purchasing must meet all federal requirements, but may be exempt from specific state purchasing requirements based on the charter award.

Small Purchase Threshold

[TDA]

Less than or equal to \$50,000.

[TEA]

Less than \$50,000 (TEA).

Micro-Purchase

[USDA]

\$10,000 on a single purchase—purchases must be equitably distributed.

[TEA]

\$10,000 annually for the purchase of *like-type* items—district and charter determination of *like-type* items.

Buy American

[USDA]

Food products must meet the Buy American standard—over 51% of the final processed food product must consist of agricultural commodities that were grown domestically.

[EDGAR, 2 CFR 200]

Not allowable.

Local Preference

[USDA]

SNP operators may assign preference points for local products or services as long as the definition for local is created by the SNP operator.

[Texas Law]

Purchases made with state funds be awarded to products created within the state or business located in within the state; however, federal EDGAR regulations prohibit any geographic preference in procurements.

Public Advertising

[USDA]

Public notice for a procurement solicitation must be announced in a publication with the highest possible circulation in order to increase competition—Depending on the products or services to be procured, county and regional newspapers may not meet this criteria.

[Texas Law]

Public notice for a procurement solicitation may be announced in the largest circulation newspaper in the county in which the district or charter is located.

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Cooperative Purchasing

[USDA]

SNPs may use cooperative purchasing methods.

Third party cooperatives must be procured.

Group purchasing organizations or buy boards may be one source of pricing.

[TEA]

Districts and charter schools may use cooperative purchasing methods.

Third party cooperatives must be procured.

Group purchasing organizations or buy board may be one source of pricing.

If cooperative purchasing vendors are unable to meet all regulatory requirements, the district or charter school must take action to address requirements the vendor is unable to meet. The additional actions bring the vendors procurement practices into compliance.

Evaluation Criteria

[USDA]

Cost must be given the highest priority in evaluating offers. Other criteria must assist the CE in determining the most responsive and responsible offer. For example,

- Price/Cost (Total cost of proposal submitted, must be the primary consideration.)
- Responsiveness to specifications and technical requirements
- Demonstration of responsibility (experience, reference letters, financial condition/stability, business practices)
- Accounting and reporting systems, as applicable

[Texas Education Code (TEC)]

The district or charter must consider all of the following criteria:

- Purchase price
- Reputation of the vendor and of the vendor's goods and services
- Quality of the vendor's goods or services
- Extent to which the goods or services meet the district's (or charter's) needs
- Vendor's past relationship with the district (or charter)
- Impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses
- Total long-term cost to the district (or charter) to acquire the vendor's goods or services
- Any other relevant factors specifically listed in the request for bids or proposals (i.e., vendor response time or compatibility of goods/products with those already in use)

Guidance

Administrator's Reference Manual (ARM), Section 17,
Procurement, www.squaremeals.org

2 Code of Federal Regulations (CFR) Part 200

7 Code of Federal Regulations (CFR) Parts 210, 215, and 220

Financial Accountability System Resource Guide,
www.tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/

Education Department General Administrative Regulations
(EDGAR)

Summary of Guidance TDA Provides to Clarify Regulatory Differences Between USDA and USDE

Conflicting Program Regulations

For contracting entities (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 Administration Regulations (EDGAR)

CEs receiving funds through the United States Department of Education are required to follow the regulations described in the *Education Department General Administration Regulations (EDGAR)* for those funds, which incorporates 2 *CFR Part 200*. However, Child Nutrition Programs (CNPs) receiving USDA funds must 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).

Small Purchase Threshold

In Texas, most CEs operating NSLP and SBP will fall into one of two types of entities:

- *Governmental, Regulated by the Texas Education Agency (TEA) or Non-TDA State Agencies*—These CEs must use the simplified acquisition threshold established by TEA.
Less than \$50,000 (equal to or less than \$49,999.99). CEs may also be subject to a lower simplified acquisition threshold based on local or other applicable state regulations.
- *Nongovernmental*—These CEs must use the simplified acquisition threshold established by TDA, equal to or less than \$50,000.
Equal to or less than \$50,000. CEs may be subject to a lower simplified acquisition threshold based on local or other applicable state regulations.

Micro-Purchase

Aggregate as Defined by USDA

The aggregate total for a micro-purchase amount is the total cost for a single invoice for a single purchase or transaction. It is not an accumulation of weekly, monthly, or annual purchases for a specific product and/or service—it is an individual purchase or contract with an individual invoice or contracted price. However, the total cost for a micro-purchase may be broken into multiple payments which are paid as each product and/or service is delivered or when specified expectations are met. In these cases, the aggregate is the total cost when all payments are totaled.

Aggregate as Defined by TEA under EDGAR

The aggregate amount, for purposes of a micro-purchase, is defined locally by the school district by identifying “like-types” of purchases. The aggregate is then calculated across all federal education grants and across the school district’s fiscal year for each “like-type” of purchase. The aggregate amount is not a single purchase or single purchase order. At such time as the aggregate for the type of purchase exceeds the \$10,000 threshold, the district must begin getting price quotes for the small-purchase.

Buy American

The Buy American provision requires schools to purchase domestically grown and processed food to the maximum extent practicable. For a food product to meet the Buy American requirement, over 51% of the final processed food product must consist of agricultural commodities that were grown domestically (sometimes, referred to as processed *substantially* using domestic agricultural commodities). Domestic food products include food products from the United States territories: Guam, American Samoa, Virgin Island, Puerto Rico, and the Northern Marian Islands.

Local Preference

CEs may give preference or bonus points to local producers when soliciting and awarding contracts for the purchase of unprocessed locally grown or raised agricultural products as long as the preference or bonus points do not restrict full and open competition. The CE must include the following information in its written procurement procedures when applying a local preference option: (1) items or situations when local preference will be used and (2) methods for applying preference or bonus points when identifying the most responsive and responsible offer.

Defining Local

USDA regulations give the local entity the authority to define local as long as the definition does not restrict full and open competition. For procurement, the CE may define a local geographic area as an area located within a specified number of miles or within a geographic boundary (county, state, or multi-state). It may use different geographic areas for different types of products and for different seasons. A state agency must not mandate a definition and must not prohibit the use of a local entity's definition for *local* for the purposes of procurement for the SNP unless the CE's definition restricts full and open competition.

Public Advertising

The solicitation must be publicly advertised with sufficient response time prior to the bid opening date to allow sufficient time for potential offerors to respond. Typically, a sufficient amount of time is two weeks with notification being made at least twice during that period. However, CEs should check to see if there are public advertising requirements specified by the agency or organization that has regulatory authority (federal, state, or local) over the entity for all purchases. Moreover, in cases where the offer for an IFB or RFP is expected to be complicated or lengthy, CEs should expand the notification period.

Highest Possible Circulation

The choice of an advertising publication is expected to ensure that the announcement or notice of the solicitation has the highest possible circulation. Therefore, publicizing a solicitation in a regional newspaper may not be sufficient notification if the circulation of the paper is limited geographically. In addition to print publication, CEs should consider the value of using online publication of solicitation documents to reach wider audiences.

For Example: A CE is issuing a solicitation for a maintenance contract for refrigerators located at 20 sites. It is likely there will be enough bidders in the city and surrounding areas to ensure that there are sufficient competitive bids for this contract. In this case, placing a notice in the city/county newspaper with the largest circulation will meet the requirement.

A CE is issuing a solicitation for 7 million single serve, 5-compartment meal trays delivered in increments of 150,000 over a period of 6 months. After identifying that only 1 possible bidder is located in the county, the CE realizes that it will need to advertise to wider circulation in order to get sufficient competitive bids. Therefore, the CE places its solicitation notice in the city paper with the largest circulation and in a larger newspaper

with a circulation that includes 2 other large cities. In addition, the CE will post a notice in an online state-wide bid notice system. Placing a notice in the two newspapers and the online system will meet the requirement.

Evaluation Criteria

CEs must ensure that the evaluation criteria place the highest priority on costs. Evaluation criteria must include criteria to assist the CE in identifying the most responsive and responsible offer.

USDA Sample Criteria

- Price/Cost (Cost must be the primary consideration.)
- Responsiveness to specifications and technical requirements
- Demonstration of responsibility (experience, reference letters, financial condition/stability, business practices)
- Accounting and reporting systems

TEA Sample Criteria

- Purchase price
 - Reputation of the vendor and of the vendor's goods and services
 - Quality of the vendor's goods or services
 - Extent to which the goods or services meet the district's needs
 - Vendor's past relationship with the district
 - Impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses
 - Total long-term cost to the district to acquire the vendor's goods or services
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