

## Module 1–Resource Management and Procurement

### Target Audience

School food authority (SFA):

- Nutrition director of school districts and county offices of education (COE)
- Staff responsible for the financial and administrative components of the child nutrition program (CNP)

For Residential child care institutions (RCCI):

- Executive director
- Food service director (FSD) of RCCI
- Staff responsible for the financial and administrative components of the CNP

**Estimated Time Required:** 60 minutes

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### Learning Objectives

- Understand the requirements for and the uses of the cafeteria fund in the School Nutrition Program (SNP)
- Identify NCRs and the options to spend down the excess or apply for an exception to the limitation
- Define and be able to calculate the weighted average price (WAP) of lunches and determine the PLE
- Identify the procurement standards for CNPs and the ethical standards regarding vendors
- Explain and be able to determine if the revenue from nonprogram food sales is equal to or greater than the total cost of the nonprogram foods
- Describe the difference between indirect and direct costs and how a district may charge direct and indirect costs to the cafeteria fund

## 1. Resource Management of the School Nutrition Program

### Cafeteria Fund Overview

The cafeteria fund (nonprofit school food service account), is strictly governed by both federal and state laws. It is a required and restricted account (separate from the general fund) that must be in place to track the revenue and expenses used solely for the purposes of the nonprofit school food service operations.

Title 7, *Code of Federal Regulations (7 CFR)*, Section 210.2 defines, **the nonprofit school food service account** as the restricted account in which all of the **revenue** from all food service operations conducted by the SFA principally for the benefit of students is retained and used **only** for the operation or improvement of the nonprofit school food service.

**Revenue** is defined as all monies received by or accruing to the nonprofit school food service including, but not limited to, children's payments, earnings on investments, other local revenues, state revenues and federal cash reimbursements.

California *Education Code (EC)* sections 38084, 38091, and 38093 requires all revenues from the sales of food service to be deposited into the cafeteria fund account and spent on the maintenance, improvement, and operation of the **cafeteria** (food service).

State law authorizes expenditures from the cafeteria fund only for those charges defined in the *California School Accounting Manual (CSAM)* or by the California Department of Education (CDE) Nutrition Services Division (NSD) in accordance with state and federal rules and regulations.

To view or download the *CSAM*, please visit the CDE Finance and Grants Web page at <http://www.cde.ca.gov/fg/ac/co/csamletter2016.asp>.

The CDE created a Web page that provides guidance, federal regulations, and resource materials covering allowable uses for cafeteria funds. The Cafeteria Fund Guidance Web page is located on the CDE Web page at <http://www.cde.ca.gov/ls/nu/sn/cafundguide.asp>.

### Administrative Review Financial Overview

The U.S. Department of Agriculture (USDA) requires an administrative review (AR) of all SFAs participating in the SNP at least once during each three-year review cycle. As part of the AR, a risk assessment is conducted to determine if the SFA is at an increased risk of noncompliance with federal financial requirements. The review includes the following integral areas to assess the SFA's financial health:

- Maintenance of the cafeteria fund (nonprofit school food service account)
- Paid Lunch Equity (PLE)

- Revenue from nonprogram foods
- Indirect costs

SFAs determined to be at risk of noncompliance with federal financial requirements (per 7 *CFR*, Section 210.14, 7 *CFR*, Part 250 and Title 2, *Code of Federal Regulations* (2 *CFR*), Part 200) and state laws that govern the management of the SNP will receive a comprehensive review for each area at risk.

## 2. Cafeteria Funds

SFAs participating in the federal SNP must observe federal, state, and local limitations on the use of cafeteria funds as set forth in 7 *CFR* sections 210.9 and 210.14.

### Necessary, Reasonable, and Allocable

The overriding cost principle for charges to the cafeteria fund is that they must be necessary and reasonable for proper and efficient performance and administration of the federal award (reimbursement) (2 *CFR*, Part 200, Subpart E). This requires costs to:

- Benefit the program
  - Necessary for performance or administration of the grant
- Follow sound business practices
  - Include arm's length bargaining
  - Follow federal, state, and local laws
  - Follow terms of the grant award (federal and state requirements)
- Be the market price for comparable goods and services
- Be prudent and not deviate from standard practice
  - Meet the needs, but does not exceed beyond what is necessary

Allocable charges may be made to the cafeteria fund only in proportion to the relative benefit received by the program. For example, if a vehicle is purchased that is necessary and prudent and will be used solely by the food service program; it may be charged to the cafeteria fund.

## Land and Building

SFAs may not use funds (revenues) from the cafeteria account to buy land, buildings, or to build buildings without prior approval from the USDA Food and Nutrition Service (FNS), and an approved waiver of *EC* 38100 and 38101 from the State Board of Education. Specifically, 7 *CFR* 210.14(a), nonprofit school food service states: **Revenues** received by the nonprofit school food service are to be used **only** for the operation or improvement of such food service, *except that*, such **revenues shall not be used to purchase land or buildings, unless otherwise approved by FNS (USDA), or to construct buildings**. Expenditures of nonprofit school food service revenues shall be in accordance with the financial management system established by the state agency under Section 210.19(a) of this part. **(Emphasis added).**

State law aligns with the regulation cited above. Specifically, *EC* Section 38100 states: “The cost of housing and equipping cafeterias is a charge against the funds of the school district.” Whenever there is a conflict between state and federal laws and regulations, you must follow the stricter law or regulation.

## Capital Expenditures

Title 2 *CFR*, Section 200.439 requires the CDE to approve expenditures for food service equipment if the per unit cost is \$5,000 or greater. To ease the burden on SFAs, the CDE developed a list of USDA preapproved equipment. The Capital Expenditure Approved List is available on the CDE Cafeteria Funds Guidance Web page at: <http://www.cde.ca.gov/ls/nu/sn/documents/capexpapprovedlist.xls>.

If an SFA purchases equipment with a unit cost of \$5,000 or greater that is not on the Capital Expenditure Approved List, the SFA must submit a request to the CDE for approval prior to purchasing the item.

Requests for prior approval must be sent by e-mail to the Resource Management Unit (RMU) at [snpcafefundquestions@cde.ca.gov](mailto:snpcafefundquestions@cde.ca.gov) with the following information:

- Subject line: **Capital Expenditure Request** (an indication if it is an emergency request) **and your district or agency name**
- Body of the e-mail must include:
  - SFA Name, Child Nutrition Information and Payment System (CNIPS) identification (ID) number (#), contact information (phone and e-mail address)
  - Describe the equipment, including the purpose and how it supports the operation or maintenance of the nonprofit school food service
  - Provide an estimated cost and whether or not you have sought bids

- Describe how the old equipment (if any) will be disposed of and acknowledge that any proceeds from the disposition will be used to offset the cost of the replacement
- Acknowledge that any equipment purchased will be used exclusively (100 percent) by the nonprofit school foodservice

### **Determining if School Garden or Other Farm to School Activity Costs Are Allowable**

When assessing whether costs associated with school gardening or other farm to school (F2S) activities are an allowable expense from the cafeteria fund, the SFA should consider the following:

1. Are the F2S activities or school garden development (including purchasing garden supplies and equipment) supporting the operation or improvement of the school meal program, and are the expenses reasonable?
2. Is the SFA currently providing meals that are in compliance with the National School Lunch Program (NSLP) and School Breakfast Program (SBP) meal patterns?
3. Is the SFA in compliance with 7 *CFR* Section 210.14?
  - a. Is the SFA in compliance with their net cash resources (NCR) limitation?
  - b. Does the SFA plan to spend down the excess of their NCR limitation?
4. Will funding a staff position or activities related to nutrition education, school gardening, or F2S support the operation or improvement of the NSLP and/or SBP?

**Note:** Salaries for staff positions strictly supporting horticulture classes, Future Farmers of America clubs, or other school associations are **not allowable charges** to the cafeteria fund.

For more information on school garden and F2S expenses, see the CDE Management Bulletin (MB) SNP 08-2015 F2S and School Garden Expenses on the CDE NSD SNP Management Bulletin Web page at <http://www.cde.ca.gov/ls/nu/sn/mbsnp082015.asp>.

### **Assessing Proposed Nutrition Education Expenses**

Based on the guidance in the USDA Policy Memo SP 07-2015, the CDE released MB 05-2016 Assessing Proposed Nutrition Education Costs and developed the following procedures for SFAs requesting to use cafeteria funds for nutrition education materials and activities:

1. At least three months prior to the anticipated cafeteria fund expenditure on the nutrition education materials or activities, the SFA is required to:
  - a. Complete and submit **Form ID SNP 63, Nutrition Education Expenditure Request**, available in the Download Forms section of the SNP module located on the CNIPS Web site at <https://www.cnips.ca.gov/>.

- b. E-mail the completed form to [NutrEdExpenditure@cde.ca.gov](mailto:NutrEdExpenditure@cde.ca.gov).
2. The CDE will review each request and then notify the SFA of approval or denial by e-mail.
3. The SFA is responsible for maintaining documentation of the CDE's prior approval of the expenditure for three years and must have the approval available during their AR. Failure to provide this prior approval may result in the entire cost being disallowed.

For more information on assessing nutrition education expenses, see the CDE MB SNP 05-2016: Assessing Proposed Nutrition Education Expense on the CDE NSD MB Web page at <http://www.cde.ca.gov/ls/nu/sn/mbsnp052016.asp>.

### Alternate Meals

Although an alternate meal (also known as an Emergency Meal) is not clearly defined in federal or California state regulations, the use of alternate meals refers to any meal served to a student that is different from the day's advertised meal. Alternate meals are most often provided to students who have documented doctor-approved meal substitutions, or to those students who have lost or forgotten their meal payment(s) or medium of exchange (i.e. cards, tickets, or tokens). **Alternate meals may not be offered to a free or reduced-price (F/RP) eligible student except for a documented medical meal substitution** (see Module 9 for more information on special dietary needs).

Most often, alternate meals are provided to full-price paid students who have forgotten their meal payment(s) or medium of exchange.

### Alternate Meal Policies

- F/RP Meals
  - School districts and COEs **cannot** serve an alternate meal to a student eligible for a F/RP meal that does not have the ability to pay for his/her meal on a given day
- Full-Price (Paid) Meals
  - Full-price meal payment and pricing policies are a matter of local discretion and/or dependent on PLE
  - Local policies may include decisions on whether or not to extend credit or charge students who forgot their meal money and whether or not to provide an alternate meal to such children

For more information, see the USDA SP 58-2016 Policy Memo *2016 Edition: Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools* on the USDA Policy

Web page at <https://www.fns.usda.gov/school-meals/2017-edition-overcoming-unpaid-meal-challenge-proven-strategies-our-nations-schools> .

## Unrecovered Debt

To clarify 2 *CFR* 200.426: Bad Debts, the USDA provided additional guidance. Under federal guidance, bad debt, and unrecovered or delinquent debt are separate categories of the same unpaid meal charges. Unpaid meal charges are initially considered unrecovered or delinquent debt. Once the unrecovered or delinquent debt is considered uncollectable, the unpaid meal charge is classified as bad debt. The CDE issued MB SNP-03-2017 Unpaid Meal Charges and Excess Account Balances that located on the CDE NSD SNP MB Web page at <http://www.cde.ca.gov/ls/nu/sn/mbsnp032017.asp>.

- **Unrecovered or delinquent debt** refers to meal charges that have not been paid by the student(s) or parent(s) during the school year.
- **Bad debt** is unrecovered/delinquent debt that, after all reasonable steps have been taken, has not been recovered by, or before, the end of the school year in which the debt was incurred.
- **Exceptions** for bad debt at the end of the fiscal year are:
  - The debt is incurred less than 90 days prior to the end of the fiscal year.
    - The SFA is afforded an opportunity to have a maximum of 90 days to collect the debt and receive payment for the unpaid meal charges. The 90 days begins at the end of the claiming period for the debt incurred.
  - The SFA enters into a six-month repayment plan with parents prior to the end of the fiscal year that will continue into the next fiscal year.
- The SFA's meal charge policy, at a minimum, should follow these guidelines:
  - Must not overtly identify students with unrecovered/delinquent debt.
  - Collection costs and procedures must conform with the cost principles set forth in 2 *CFR* 200, Section 200.426:
    - The cost to recover the unpaid meal charges cannot exceed the actual debt owed, e.g., if a student has a debt of \$5, the SFA cannot not spend over that amount to collect the debt.
    - The SFA's collection policies must be consistent with the district's collection procedures and policies.

After all reasonable steps have been taken to recover the unrecovered/delinquent debt, and if the SFA is unsuccessful in collecting the unrecovered/delinquent debt by the end of the school year, then the debt is considered a bad debt and an allowable nonfederal funding source(s) (e.g., PTA or district general fund) must repay the Cafeteria Fund for the total amount.

On July 8, 2016, the USDA issued Policy Memo SP 46-2016: Unpaid Meal Charges: Local Meal Charge Policies, and SP 47-2016 Unpaid Meal Charges: Clarification on Collection of Delinquent Meal Payments. These memos provide updated guidance addressing the need for SFAs to institute and clearly communicate a meal charge policy which includes the availability of alternate meals, and federal policy clarification for delinquent debt and bad debt.

You can view Policy Memos SP 46-2016, SP 47-2016, and SP 57-2016 on the USDA NSLP Policy Web page at <http://www.fns.usda.gov/school-meals/policy>.

Resources related to unpaid meal charges may be found on the FNS Unpaid Meal Charges Web site at <http://www.fns.usda.gov/school-meals/unpaid-meal-charges>.

You can view MB SNP 05-2018, Child Hunger Prevention and Fair Treatment Act of 2017 and USDA Meal Charge Policy Requirement on the CDE School Nutrition Web page at <https://www.cde.ca.gov/ls/nu/sn/mbsnp052018.asp>.

You can view MB SNP 03-2018, Clarification for the Use of Alternate Meals in the National School Lunch and School Breakfast Programs, and Additional Guidance on the Handling of Unpaid Meal Charges on the CDE School Nutrition Web page at <https://www.cde.ca.gov/ls/nu/sn/mbsnp032018.asp>.

For more information about the use of alternate meals and best practices on how to handle unpaid meal charges, refer to the following resources:

Frequently Asked Questions (FAQ) regarding denial of meals located on the USDA Web page at <https://www.fns.usda.gov/school-meals/faqs>

**Note:** Sponsors may choose to eliminate the reduced-price meal charge. Participation has been shown to increase when this charge is eliminated. Meals are still counted and claimed in the reduced-price category. The cafeteria fund may cover the unfunded portion for these meals, but not for paid meals. These meals if claimed, must meet program requirements. For more information, access the USDA Policy Memo SP-17-2014—Discretionary Elimination of Reduced Price Charges in the SNP located on the USDA Web page at <http://www.fns.usda.gov/discretionary-elimination-reduced-price-charges-school-meal-programs>

## Documentation

SFAs must adequately document all purchases with invoices and/or receipts. In addition, the purchase order, proof of delivery or performance, and any final approvals should be available for audit. CSAM, Procedure 905, states that personnel expenditures directly charged to the cafeteria fund must be documented with a periodic certification or a personnel activity report (PAR).

An employee who works solely on one activity (one cost objective) that is funded by a single federal source, (i.e., food service worker, food delivery driver, FSD [those preparing and serving meals]) may document time through a semiannual certification that states 100 percent of their time is devoted to only food service activities. In accordance with CSAM, Procedure 905, the Periodic Certification: (1) is prepared at least semiannually, (2) certifies that the employee works 100 percent on that program for the period covered by the certification, and (3) is signed by the employee or supervisory official having firsthand knowledge of the work performed by the employee. Blanket semiannual certifications identifying all employees working 100 percent on the funding source and signed by the supervisor having firsthand knowledge of the work being performed by the employees is acceptable documentation.

An employee who works on multiple cost objectives, (i.e., custodians, warehouse and maintenance workers, program directors, business office administrators, etc.), would be required to document their time through a PAR or equivalent documentation.

A PAR or equivalent documentation must: (1) reflect an after-the-fact distribution of the actual activities of each employee, (2) account for the total activities for which each employee is compensated, (3) be prepared at least monthly and coincide with one or more pay periods, and (4) be signed by the employee

Neither the CDE nor federal regulations require the SFA to use a specific PAR form. The SFA may use either the sample PAR in the CSAM, Procedure 905, or its own PAR (as long as the PAR satisfies all of the requirements found on CSAM, Procedure 905). For CNPs, the NSD recommends that SFAs use a PAR similar in detail to the CDE Sample PAR located on the CDE NSD Web page at <http://www.cde.ca.gov/ls/nu/sn/documents/SNPSamplePAR.xls>. For audit purposes, SFAs may need to provide additional documents to substantiate the information reported on the SFA's PARs. Hourly time accounting is the method most acceptable to auditors, and the safest approach is to provide more documentation rather than less.

MB SNP-06-2014, Documenting Employee Time and Effort in Federal SNPs is located on the CDE NSD SNP MB Web page at <http://www.cde.ca.gov/ls/nu/sn/mbsnp062014.asp>. This MB provides guidance to SFAs about federal requirements pertaining to documentation of employee time and effort by SFA employees whose salaries and wages are supported by federal funds.

### **California Education Code**

In addition to federal regulations, the California *EC* also governs the cost principles for the cafeteria fund. *EC*, Section 38101(d)(e), requires a written explanation of the purpose of and basis for any charges to, or transfers from, a cafeteria fund and does not authorize an SFA to charge the cafeteria fund for any charges prohibited by state or federal law or regulation.

### **3. Net Cash Resources**

Title 2 *CFR*, Section 210.2 defines Net Cash Resources (NCR) as all monies as determined in accordance with the state agency's established accounting system that are available to or have accrued to an SFA's nonprofit school food service at any given time, less cash payables. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit, and the value of stocks, bonds or other negotiable securities.

The SFA shall limit its NCR to an amount that does not exceed three months' average expenditures for its nonprofit school food service or such other amount as may be approved by the state agency in accordance with 7 *CFR* 210.19(a).

It is recommended that SFAs calculate their NCR at least annually. The CDE has provided a sample calculator that can assist an SFA with calculating their NCR. The sample calculator is located in the Download Forms section of the CNIPS Form SNP 57: Sample NCR Calculator Tool.

To ensure compliance with these regulations, the CDE is required to monitor, through review, audit, or by other means, the NCR of the nonprofit school food service.

If excess NCR are identified, the SFA must enter into a **Budget Agreement**. A **budget agreement** is available to align the SFA's cafeteria fund to an approximate three-month average operating expenditure threshold.

With a **budget agreement**, the LEA works with the RMU to create a spend-down plan to address their NCRs excess. The **budget agreement** allows the LEA to employ the following expenditure options to draw down their excess NCRs:

- Making capital expenditures
- Increasing staffing levels
- Improving nutritional food quality
- Providing staff training

All **budget agreement** requests must be submitted by e-mail to [SNPBA@cde.ca.gov](mailto:SNPBA@cde.ca.gov).

**Please use the following e-mail format:**

**Subject line must include:**

- **Assistance being requested and your district or agency name** (e.g., budget agreement, PLE, nonprogram revenue, or capital expenditure) (Example: expenditure request and ABC Unified School District)

**Body of e-mail must include:**

- SFA Name
- CNIPS ID #
- Description of the issue
- If capital expenditure request, explain why the equipment is necessary and prudent

## **Revenue Sharing**

SFAs participating in SNPs that partake in revenue sharing through Memorandums of Understanding (MOU) are **not** allowed. SFAs may continue to purchase food for a Parent–Teacher Association (PTA) or student body association with the implementation of an agreement set forth between both parties. The agreement must disclose all cost(s), including labor to purchase and prepare any food items. In addition, all agreement terms must be satisfied before any revenue can accrue to the organization.

For additional information, see MB NSD-SNP-09-2015, Revenue Sharing in SNPs located on the CDE Web page at <http://www.cde.ca.gov/ls/nu/sn/mbsnp092015.asp>.

## **4. Paid Lunch Equity**

Section 205 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) requires SFAs participating in the NSLP to determine their WAP for paid student lunches in the previous school year, and gradually increase the SFA’s paid lunch price until it is equal to or greater

than the difference between the free meal reimbursement and the paid reimbursement rates for the previous school year.

SFAs are not required to increase paid lunch prices by more than \$0.10 per school year (SY), although SFAs may opt to raise their prices by more than \$0.10 per SY and use the amount over \$0.10 as carryover in future years. The PLE requirement was developed to ensure that SFAs provide sufficient funds to their cafeteria fund for paid lunches and thereby avoid using cafeteria funds intended to cover the cost of free and reduced-price lunches to cover costs for paid lunches.

**SFAs participating in the NSLP are required to:**

- Annually establish paid meal prices in accordance with the procedures in the HHFKA
- Annually calculate their weighted average price (WAP) for paid lunches
- Adopt one of the two options listed below or a combination of the two options if charging less for a paid lunch than the difference between the federal reimbursement for free and paid lunches (\$2.70 for SY 2014–15 and \$2.78 for SY 2015–16):
  - Gradually increase their average lunch price, or
  - Provide a nonfederal funding contribution to their cafeteria fund account to cover the difference

The CDE will verify that SFAs are making accurate price calculations and modifications during the AR to ensure SFA compliance with this requirement.

Paid lunch participation at sites that participate in Provisions 1, 2, or 3 or the Community Eligibility Provision (CEP) are not included in the calculation of a WAP. If all of an SFA's sites are participating in Provisions 1, 2, or 3, or the CEP, then the SFA is not required to calculate their WAP or complete the PLE calculation tool.

For help with calculations, please visit the USDA PLE Calculation Tool Web page at <https://www.fns.usda.gov/school-meals/paid-lunch-equity-school-year-2017-2018-calculations-and-tool> .

For further guidance, see MB USDA-SNP-08-2016, PLE Requirement and Calculation Tool, located on the CDE NSD SNP MB Web page at <http://www.cde.ca.gov/ls/nu/sn/mbsnp082016.asp>.

Additional resources are located on the USDA Policy Memo—Equity in School Lunch Pricing Fact Sheet Web document at [https://www.fns.usda.gov/sites/default/files/Pricing\\_Equity\\_Facts.pdf](https://www.fns.usda.gov/sites/default/files/Pricing_Equity_Facts.pdf)

## 5. Nonprogram Food Revenues

Section 206 of the HHFKA requires that the percent of total revenue that is generated from their nonprogram food sales is equal to or greater than the percent of total food costs that are attributable to the SFA's purchase of nonprogram foods. Nonprogram foods are defined as food and beverages, other than a reimbursable meal, sold in a participating school and purchased using funds from the cafeteria fund. The different types of nonprogram foods can include, but are not limited to:

- A la carte food items sold in competition with school meals
- Adult meals
- Items purchased for fundraisers, vending machines, school stores, catering, special school banquet functions, and vended meals
- Sale of a second meal

Program foods are federally reimbursable lunches, breakfasts, and snacks served in the NSLP and the SBP.

SFAs must calculate their nonprogram food revenues and make all documentation of such calculations available upon request and during an AR to ensure compliance. To implement this requirement, SFAs must identify and track the following information for either an entire school year (e.g., 2016–17) or for a reference period of 22 consecutive school operating days: (For more information on the reference period methodology, refer to the NSD MB SNP-04-2016 on the SNP MB Web page at <http://www.cde.ca.gov/ls/nu/sn/mb.asp>.)

- All nonprogram food costs separated from program food costs
- All nonprogram revenues separated from program food revenues

The USDA policy memo SP 20-2016 provides nonprogram food guidance for Food Service Management Companies (FSMCs) in Question 14. In School Year 2015–17, the USDA required all SFAs using FSMC fixed-price contracts to comply with the nonprogram food requirements set forth in Title 7, *CFR* Section 210.14. If your fixed price FSMC contract, awarded on a per meal basis, does not contain the food cost data needed to determine the revenue for the nonprogram food, then your next solicitation or contract extension must include language that clearly identifies the requirement for respondents to provide essential nonprogram food cost information. For example, the language in the solicitation or contract extension should require the FSMC to annually provide current food costs for reimbursable meals, food costs for nonprogram foods, revenue from nonprogram foods and total revenue. The FSMC should also be required to annually provide historical information on the type and value of nonprogram foods and meals to be offered in other food service operations such as catering. For more information see NSD MB SNP-06-2017 on the SNP MB Web page at <http://www.cde.ca.gov/ls/nu/sn/mb.asp>.)

Annually, SFAs are required to determine if the percent of total revenue that is generated from their nonprogram food sales is equal to or greater than the percent of total food costs that are

attributable to the SFA's purchase of nonprogram foods. Simply raising revenue by the difference between the two ratios for each nonprogram food item might not resolve the discrepancy. SFAs must also reassess compliance if there is a change in either a la carte prices, items offered for sale, or the price of meals for adults or second meals. By tracking revenues and food costs separately, an SFA will be able to determine the following:

- If the proportion of nonprogram food revenues to program food revenues is greater than or equal to the proportion of the nonprogram food costs to total food costs, then no additional action is required.

Summary of Formula to Determine Compliance:

nonprogram food revenue / total program plus nonprogram revenue is greater than or equal to total nonprogram food costs / total program plus nonprogram food costs

**In compliance—no action required.**

- If the proportion of nonprogram food revenues to program food revenues is less than the proportion of nonprogram food costs to program food revenue food costs, then the SFA is out of compliance and must make necessary adjustments, or use nonfederal funds to make up the difference.

Summary of Formula to Determine Compliance:

nonprogram food revenue / total program plus nonprogram revenue is less than or equal to total nonprogram food costs / total program plus nonprogram food costs

**Out of compliance—must make adjustments.**

The following table and steps one through three demonstrate how to calculate compliance with this provision:

Annual SNP Costs	Amount
Cost for reimbursable meal food	\$450,000
Cost of nonprogram foods	\$50,000
Total food costs	\$500,000

Total nonprogram foods revenue	\$120,000
Total program foods revenues	\$1,000,000
Additional revenues needed for compliance	\$0

**Step 1**

Determine the ratio between nonprogram food costs and total food costs  
(Using the example above:  $\$50,000/\$500,000 = 0.1 \times 100 = 10$  percent)

**Step 2**

Determine the ratio between nonprogram foods revenue and total foods revenues

(Using the example above:  $\$120,000/(\$1,000,000 + \$120,000) = 0.107 \times 100 = 10.7$  percent)

**Step 3**

Since the 10.7 percent revenue is greater than the 10 percent food cost, the SFA is in compliance with federal regulations.

To the extent that revenues fall short of the target, SFAs must take action to either increase à la carte prices or invest additional nonfederal funds in the cafeteria fund from sources outside the cafeteria fund.

The cost of labor is not included in the above calculations, but SFAs are required to include labor in the pricing of food and beverages they serve when they cater or vend to outside entities like the school board or other school districts.

SFAs must keep all records related to program and nonprogram food costs and revenues in order to document compliance in this area.

For more information, review USDA Memo SP 20–2016: Nonprofit School Food Service Account Nonprogram Food Revenue Requirements on the USDA policy Web document at <http://www.fns.usda.gov/sites/default/files/cn/SP20-2016os.pdf> and the CDE MB USDA-SNP-36-2012 Nonprogram Foods-Updated Guidance located on the CDE NSD SNP MB Web page at <http://www.cde.ca.gov/ls/nu/sn/mbusdasnp362012.asp> and the CDE NSD MB SNP-04-2016 at <https://www.cde.ca.gov/ls/nu/sn/mbsnp042016.asp>

The Nonprogram Revenue Calculator Tool is located on the USDA Web page at <http://www.fns.usda.gov/guidance-paid-lunch-equity-revenue-nonprogram-foods>.

## 6. Indirect Cost Guidance

Indirect costs are agency-wide, general management costs. General management costs consist of administrative activities necessary for the general operation of the agency, such as accounting, budgeting, payroll preparation, personnel services, purchasing, and centralized data processing. The CDE is the recognized agency authorized to establish indirect cost rates for California LEAs under the terms of a delegation agreement and indirect cost plan negotiated with the U.S. Department of Education. The terms of the agreement are renegotiated periodically and are binding on all federal agencies pursuant to 2 *CFR* 200. The terms of the agreement are reflected in the guidance on indirect costs for California LEAs contained in *CSAM*, Procedure 915. The CDE annually updates indirect cost rates and posts them on the CDE Indirect Cost Rate Web page at <http://www.cde.ca.gov/fq/ac/ic/>. Indirect costs must be claimed based on actual program expenditures rather than on budget estimates and LEAs can only charge the lesser of the LEA's approved indirect cost rate or the statewide average for food service. For SY 2016–17, the statewide average indirect cost rate is 4.92 percent.

In addition, the USDA released a manual to provide guidance to sponsors on matters concerning indirect costs. Due to the complexity of this issue, the NSD strongly recommends that NSLP and SBP sponsors review USDA Policy Memo SP 60-2016 Indirect Cost Guidance Manual with their business officers, accounting officials, and legal representatives to ensure that they apply correct indirect costs to the cafeteria fund. The Indirect Cost Guidance Manual is located on the USDA Web document at <https://fns-prod.azureedge.net/sites/default/files/cn/SP60-2016os.pdf>.

In cases where guidance from sources other than *CSAM*, Procedure 915, conflict with the guidance in *CSAM*, SFAs must follow the guidance in *CSAM*.

### Direct Costs

Direct costs are those costs that provide measurable, direct benefits to a program.

Typical direct costs that may be charged to the cafeteria fund account include:

- Salaries of FSDs, supervisors, managers, cooks, kitchen helpers, and clerks
- Salaries of custodians and other employees who document their time spent on food service by completing a PAR or equivalent documentation and have a job description detailing such work
- Employee benefits for all employees in this program
- Food
- Laundry of food services uniforms, towels, etc.
- Costs of purchase and operations of vehicles used in the delivery of food to various locations
- Insurance on vehicles used solely for and by food service

- Repair and maintenance of equipment used in the program
- Acquisition and replacement of related equipment (from the preapproved list or with prior CDE approval)

## 7. Procurement

Procurement is the multistep process for acquiring the best possible goods and services at the lowest possible price. All purchases, whether funded wholly or in part with SNP funds, must be conducted according to federal and state procurement requirements. State and federal laws and regulations require **all** procurements to be conducted in a manner that promotes full and open competition (7 *CFR*, Section 210.21 and 2 *CFR*, Section 200.319[a]).

### Code of Conduct

**All SFAs are required to have a written code of conduct to prohibit real or apparent conflicts of interest and one that includes disciplinary actions for violations.** The written code of conduct was a requirement in 7 *CFR*, Parts 3016 and 3019 and now in 2 *CFR*, Section 200.318(c)(1).

Ethics are the moral standards individuals use to guide decisions in their personal and professional lives. Ethical procurement behaviors are practices that promote full and open competition. Ethical problems can result from the following inappropriate practices:

- **Gifts from Vendors**

The probable purpose of a vendor offering a gift to the SFA is to influence a purchasing decision. Therefore, you, your staff, or anyone related to you or your staff should **not** accept gifts from vendors. This should be a very clear policy. There are no exceptions.

A gift is defined as anything with monetary value, including trips, meals, and entertainment. There are some specific, clear-cut exceptions to this rule that may be accepted by the school district. However, if receiving any kind of incentive or gift from a vendor influences you, then it should be avoided.

Holiday gifts are another possible concern. Many SFAs make a rule that no gifts of any kind are accepted. Some set limits of a dollar figure on gifts such as candy, which can be shared with the staff. Once again, the general rule to follow is never accept a gift that could possibly influence a current or future purchasing decisions. Should you or your district allow vendors to offer gifts, it is wise to keep a record of all gifts accepted by writing a short thank you letter, a copy of which is kept permanently in your files.

- **Meals with Vendors**

Having a meal with a vendor during business hours and accepting a dinner invitation at an expensive restaurant are two different situations. Accepting a meal invitation at a

conference or convention is probably a casual and innocent gesture of friendship. A dinner at a restaurant may be an effort to influence what you purchase.

Asking a vendor to lunch in your school district or accepting an invitation to an occasional lunch may not be a concern unless you feel that such behavior will influence your purchasing decision.

- **Personal Purchases from Vendors**

In general, the practice of allowing vendors to make personal purchases is prohibited in most school districts. Combining personal funds and school district purchase orders is not a good practice. Your food service operation is not a wholesale discount store. If this practice has been allowed, it should be eliminated.

- **Giving Out Price Information**

When asking for telephone quotes from vendors, guard price information well until a purchasing decision has been made. The quotes are for your school district only. Resist dangling a price, given in confidence, in order to get a better price from the competition. Discourage anyone in your program against this practice.

The general principle under which vendors submit quotes is that the one who submits the lowest bid for identical products or services gets the order. To influence this principle in any way is considered unethical and a bad business practice. Some inexperienced buyers, thinking that they are saving the school district money, do this on a regular basis. This practice is called **shopping bids** and is unacceptable in the food service industry.

There are no secrets in the food business and buyers who treat vendors in this manner will shortly find that they do not get competitive prices from any of them. Once an SFA awards an informal or formal bid; however, it is only fair to give the bidders the information from which you made your purchasing decision.

Remember to follow the informal and formal purchasing process that is part of your written procurement plan.

MB CNP-01-2015, Written Code of Conduct and Performance of Employees Engaged in the Procurement, Award, and Administration of Contracts, is available on the CDE NSD Web page at <http://www.cde.ca.gov/ls/nu/sn/mbcnp012015.asp>. This MB provides clarifying guidance to all agencies participating in the federal CNP regarding USDA and California regulations that **require CNP agencies to have a written code of conduct** covering procurement practices. This MB applies to all program operators participating in CNP. **In addition to the written code of conduct, program operators are required to have their own written procurement procedure.**

The CDE Procurement in CNPs Web page at <http://www.cde.ca.gov/ls/nu/pr/index.asp> has

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guidance, templates, and resources to ensure proper procurement practices. This Web page also includes a written code of conduct and procurement procedure checklist to assist agencies to develop these two procurement documents.

**2 CFR, Section 200.318 General procurement standards.**

- (a) The nonfederal entity must use **its own documented procurement procedures**, which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in this part.
- (b) Nonfederal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)(1) The nonfederal entity **must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts**. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the nonfederal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, nonfederal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the nonfederal entity.

When making procurement decisions, SFAs and other CNP operators must follow the subsequent four fundamental principles:

1. State and local regulations may be more restrictive than federal policies. If a state or local threshold is more restrictive, it always supersedes the federal threshold. Local governments and school districts may set even more restrictive thresholds. SFAs should always follow the most restrictive threshold.
2. Full and open competition means free of factors that inhibit opposition. All potential suppliers are on a level playing field and have the opportunity to compete based on a known set of standards.
3. Responsible and responsive vendors: to be considered **responsive**, vendors must conform to all of the SFA's stated terms and conditions outlined in the solicitation. For example, if an SFA issues a solicitation for apples and the vendor responds with a bid for peaches, the vendor is not responsive. To be considered **responsible**, vendors must be capable of performing successfully under the terms and conditions of the contract. For example, if an SFA requires that responders provide evidence of past success in meeting delivery times and, upon calling the responder's references, learns

that the vendor has a poor track record regarding on-time deliveries, the vendor would not be considered responsible.

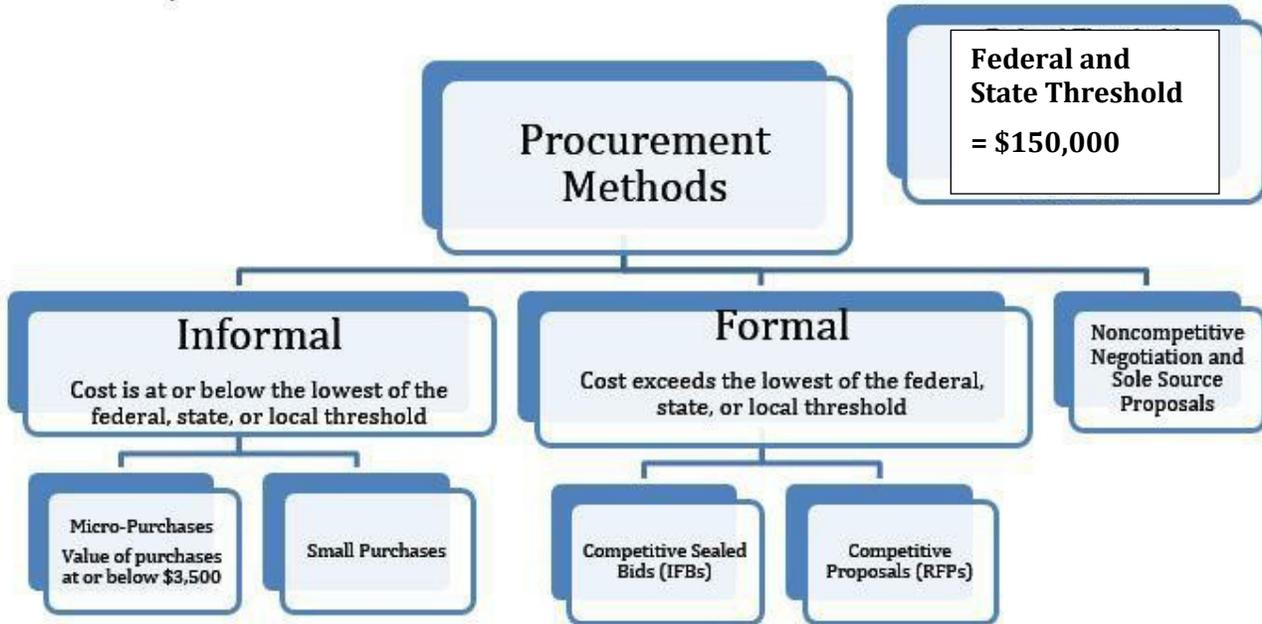
4. Buy American Provision, which requires schools to purchase domestically grown and processed foods to the maximum extent practicable. See USDA Memo SP 38-2017 Compliance With and Enforcement of the Buy American Provision in the NSLP on the USDA Policy Web page at <https://fns-prod.azureedge.net/sites/default/files/cn/SP38-2017os.pdf>

### Specific Federal and State Laws and Regulations\*

- 2 *CFR*, Part 200—<http://www.ecfr.gov/cgi-bin/text-idx?node=pt2.1.200&rgn=div5>
  - Sections 200.317–200.326—Procurement standards
  - Section 200.318—General procurement standards
  - Section 200.320—Methods of procurement to be followed
  - Section 200.324—Federal awarding agency or passing-through entity review
- 7 *CFR*, Part 210—<http://www.ecfr.gov/cgi-bin/text-idx?SID=6d66e43b40d0a023a4a37fe4562861a9&mc=true&node=pt7.4.210&rgn=div5>
  - Section 210.16—Food service management companies (FSMC)
  - Section 210.19—Additional responsibilities
  - Section 210.21—Procurement
- 7 *CFR*, Part 225 —<http://www.ecfr.gov/cgi-bin/text-idx?SID=3b3974c2464d8f60d824bf732e36336a&mc=true&node=pt7.4.225&rgn=div5>
  - Sections 225.17—Procurement standards
- 7 *CFR*, Part 226—<http://www.ecfr.gov/cgi-bin/text-idx?SID=6d66e43b40d0a023a4a37fe4562861a9&mc=true&node=pt7.4.226&rgn=div5>:
  - Section 226.21—Food service management companies
  - Section 226.22—Procurement standards
- California *Education Code* —  
<https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=EDC&tocTitle=+Education+Code+-+EDC>
  - Sections 45103, 45103.1, and 45103.5—District employment practices
- California *Public Contract Code* —  
<https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=PCC>
  - Sections 20110-20118—includes regulations for contracts awarded by school districts subject to Part 21 (commencing with Section 35000) of Division 3 of Title 2 of the *EC*

**\*This list is not an all-inclusive list of federal and state laws and regulations. The CDE highly encourages all program operators to seek advice of their own legal counsel on how federal, state, and local laws may apply to their operation.**

Refer to the procurement chart below for an overview of the different procurement methods:



**Senate Bill 544**—as of January 1, 2018, the California threshold for all SFAs is now **\$150,000**, unless the local government or school district has a lower amount (note that this is only for food services; all other district purchases must still adhere to the California *Public Contract Code (PCC)*, Section 20111).

## Procurement Process

All procurement transactions must be conducted in a manner that provides full and open competition consistent with procurement standards. Full and open competition means that all suppliers are on a level playing field and thereby have the same opportunity to compete. Fairness and integrity in all aspects of the procurement process are critical to achieving full and open competition. Competition is essential to ensure low cost and quality goods and services.

The following are examples of what is considered restrictive competition:

- Placing unreasonable requirements on vendors in order for them to qualify to do business (i.e., must have at least two drivers at all times when delivering the food)
- Having organizational conflicts of interest (i.e., vendor is son of school nutrition director)
- Having unnecessary bonding and experience requirements (i.e., vendor must be in business for a minimum of ten years)

- Specifying only a brand name product instead of allowing a preapproved equal product to be offered (i.e., will only accept XYZ broccolispears)

SFAs should continuously refer to the following basic steps in the procurement process:

- **Planning**—this step includes a needs assessment, forecasting, and budgeting. Make sure to include these steps in your written procurement plan for each type of procurement method you use. The school should be able to answer the following questions:
  - What goods or services are needed?
  - Are these goods or services available for purchase?
  - Will delivery be necessary?
  - When and where are they needed?
  - How much is needed?
- **Determining threshold**—what method of procurement is needed for the goods or services.
  - **Micropurchases**—single purchases at or below \$3,500
  - **Small purchase**—purchases at or below \$150,000 (unless the local laws or the school district has a lower threshold)
  - **Formal purchase**—purchases above \$150,000 (unless the local laws or the school district has a lower threshold)
- **Drafting specifications**—this documentation must include all the details, such as descriptions and requirements for goods or services.
- **Advertising a solicitation**—once drafted, SFAs must provide this information to potential vendors (farmers, vendors, distributors, or other businesses) who might be able to fulfill your needs as described. Follow the requirements as indicated for formal or informal procurement options.
- **Evaluating and awarding a contract**—establish evaluation criteria and then award to the most responsive and responsible bidder(s) who is able to meet your needs and provide the goods and services as described.
- **Managing the contract**—once awarded, continue to manage **and document** the contract to ensure that everything is provided according to the specifications and contract terms.

## Informal Procurement Methods

### Micropurchases

The micropurchase method is for purchases where the aggregate value **in a single transaction** is at or below \$3,500. This enables schools to purchase supplies or services without soliciting competitive quotes, if the school considers the price reasonable. SFA's may purchase products and services (similar or dissimilar purchased at once as a single, collective unit) whose aggregate cost does not exceed \$3,500 in a single transaction. Effective October 1, 2015, the micropurchase threshold is defined in 2 *CFR*, Section 200.320(a).

**Remember, if conducting micropurchases for your program operation, your written procurement procedures must include the procedures for micropurchases and you must follow the written procedures.**

### Small Purchases

The small purchase option is for securing services, supplies, or property that may be used when the anticipated acquisition will fall below the small purchase threshold. State and local regulations often set lower small purchase thresholds that are more restrictive than the federal level. In applying the small purchase threshold, the SFA must adhere to the most restrictive, lowest limit set.

Current small purchase threshold amounts are:

- Federal and State—\$150,000
- Local—varies

SFAs should always use the **most restrictive** threshold that applies.

If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. Your program operation must have written specifications to solicit quotes. It is important to document to ensure that each vendor contacted receives identical information and that you can verify whom you contacted for your quotes.

**Remember, if conducting small purchases for your program operation, your written procurement procedures must include the procedures for small purchases and you must follow the written procedures.**

For school districts and County Offices of Education only, *PCC*, Section 20116 states:

the board shall publish annually in a newspaper of general circulation published in the district...a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects in any manner as the district deems appropriate.

## Formal Procurement Method

The formal procurement method is used when the contract value is above the small purchase threshold. There are two types of formal procurement methods:

1. Competitive sealed bidding—2 *CFR*, Section 200.320(c)
2. Competitive proposals—2 *CFR*, Section 200.320(d)

### Competitive Sealed Bidding

An **Invitation for Bid (IFB)** describes in detail the services or products required and awards the contract to the lowest responsive, responsible bidder. For example, an IFB is used for canned and staple foods.

IFBs result in a firm, fixed-price contract (lump sum or unit price) that will be awarded to the most responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

1. For IFBs, the following conditions should be present:
  - a. A complete, adequate, and realistic specification or purchase description is available;
  - b. Two or more responsible bidders are willing and able to compete effectively and for the business; and
  - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
2. For IFBs, The following requirements apply:
  - a. The IFB will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for **local, and tribal governments, the invitation for bids must be publicly advertised**
  - b. The IFB, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond
  - c. All bids will be opened at the time and place prescribed in the invitation for bids, and for **local and tribal governments, the bids must be opened publicly**
  - d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of
  - e. Any or all bids may be rejected if there is a sound documented reason

## Competitive Proposals

A **Request for Proposal (RFP)** describes in a general way what is needed and requests that vendors submit a proposal for servicing the needs of the district. RFPs can be used for either goods or services. The RFP can be used when price, while still the major consideration, is only one of the evaluation criteria used to determine the best products or services that meet the specifications. The RFP allows for negotiations and evaluation criteria to obtain the best value for the price.

As of January 1, 2018, all school districts and county offices of education are exempt from the *PCC*, Section 20111. Therefore, school districts and county offices of education are no longer required to award an RFP to the vendor with the lowest price, but instead can follow federal regulations in 2 *CFR*, Section 200.320(d), unless their local laws or school district policies require them to do otherwise.

RFPs are used when two or more bidders that are responsible, willing, and able to submit an offer. Either a fixed-price or cost-reimbursement type contract is awarded.

The following requirements apply:

- RFPs must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical
  - For school districts and county offices of education the *PCC*, Section 20112 requires a school district or county offices of education to publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county
- Proposals are solicited from an adequate number of qualified vendors
- SFAs must have a written method for conducting technical evaluations of the proposals received and for selecting recipients
- Awards are made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered

**Remember, if conducting an IFB or RFP, your written procurement procedures must include the procedures for these methods and you must follow the written procedures.**

## Noncompetitive Procurements

A **noncompetitive** procurement is a method used to compensate for the lack of competition for the goods or services. This lack of competition may result from an inadequate number of suppliers in the area or the procurement environment may have been compromised by inappropriate supplier actions (i.e., market allocation schemes). Noncompetitive negotiation occurs after the solicitation (sealed bid, competitive negotiation, or small purchase) and are restricted to specific situations and may **only** be used when:

- There is inadequate competition in a formal competition
- A public emergency exists
- The state agency authorizes noncompetitive proposals in response to a written request from SFA
- Goods and/or services are only provided by a sole source

## Food Service Management Contracts

SNP regulations under 7 *CFR*, Section 210.2, define a food service management contract (FSMC) as: “a commercial enterprise or a nonprofit organization which may be contracted with the SFA to manage any aspect of the school food service.” Therefore, a vendor is considered a food service management company if it performs, but is not limited to, a **combination** of services such as:

- Preparing, delivering, or serving meals\*
- Conducting point of service (POS) meal counts
- Collecting student eligibility data in connection with meal service
- Providing meal count data to the SFA
- Preparing claims for SFA approval and submission
- Developing menus and menu production records (MPR)
- Purchasing food, supplies, or equipment
- Providing program guidance and training
- Overseeing compliance
- Implementing other activities that would normally be performed by the SFA

\**EC* Section 49554 prohibits public schools and COEs from entering into contracts for the preparation, delivery, and service of meals unless they can provide evidence to the CDE that they have had **no** food service employees since July 1, 1977, or have no or inadequate facilities in which to prepare meals. Prior to contracting for the preparation, delivery, and service of meals, public schools and COEs must obtain written responses from every school district in the county and the COE that they are not willing or are unable to provide meals. At such time as this requirement is met, public schools and COEs may request CDE approval to contract with a private meal vendor for the preparation, delivery, and service of meals.

For more information and resources, see MB SNP-13-2015 Procuring and Monitoring of FSMC Contracts on the CDE NSD SNP MB Web page at <http://www.cde.ca.gov/ls/nu/sn/mbsnp132015.asp>.

### **Preapproval Requirement**

SFAs who choose to contract with a FSMC must obtain preapproval from CDE.

7 *CFR* Section 210.19(a)(5) of requires the California Department of Education (CDE) to annually review and approve each contract (including all supporting documentation) between any SFA and FSMC **prior** to execution to ensure compliance with all state, federal, and local procurement laws and regulations. The CDE will annually notify SFAs that are due to rebid their FSMC contracts to comply with this requirement and will provide the deadline by which the SFA must submit their bid package.

The CDE must review and approve all new and renewing FSMC contracts and supporting documentation, including solicitation documents, scoring sheets, proposals, and any amendments to these documents, **before** such contracts and amendments are executed by either party (7 *CFR*, sections 210.16[a][10], 210.19[a][5], and 210.21). SFAs that do not obtain prior approval for their bid documents and contracts may not use food service program funds to pay for FSMC services.

### **Allowable costs vs. Unallowable costs**

Cost-reimbursable FSMC contracts and solicitation documents, including cost plus fixed-fee contracts, must include provisions clearly specifying that the FSMC's allowable costs shall be paid from the SFA's nonprofit school food service account after deducting all discounts, rebates, and applicable credits accruing to or received by the contractor or any assignee under the contract (7 *CFR*, Section 210.21[f][1][i]).

All cost-reimbursable solicitation documents and subsequent contracts for or including purchasing services, as well all FSMC solicitation documents and contracts, **must** require the contractor to provide the SFA with sufficient information to permit identification of the contractor's allowable and unallowable costs and the specific amount of all discounts, rebates, and credits on all invoices and bills presented for payment to the SFA (7 *CFR*, sections 210.21[f][1][ii] and [f][1][iv]).

## Additional Guidance

The SFA's solicitation documents and the contract must clearly identify all activities the FSMC is to perform involving the use of USDA Foods (7 *CFR*, Section 250.50[c] and [d]).

Bid documents may be sent by e-mail to [SFSCONTRACTS@cde.ca.gov](mailto:SFSCONTRACTS@cde.ca.gov).

For further guidance on contracting with an FSMC, you may also download the USDA Contracting with FSMCs: Guidance for SFAs from the USDA Guidance and Resources Web page at <http://www.fns.usda.gov/cnd/guidance/default.htm>.

## Vended Meal Contracts

Neither state nor federal regulations provide a definition of a meal vendor. However, it is commonly understood that companies providing prepared meals to SFAs, and nothing more, are meal vendors. In this capacity, a meal vendor may also develop menus and MPRs, but would not be considered an FSMC. However, additional services (usually conducted by the SFA) provided by a company, may constitute food service management and must be bid for and procured as such.

Meal vendors may not have access to individual student meal eligibility, **may not** collect meal payments, conduct POS meal counts, provide program oversight, collect claim data, or act as an employee of or agent for the SFA.

Meal vendors may not:

- Access individual student meal eligibility
- Act as an employee of, or agent for, the SFA
- Collect claim data
- Collect meal payments
- Conduct POS meal counts
- Provide program oversight
- For more information on the procurement process, visit the CDE Procurement Web page at <http://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp>.

## Cooperatives

Cooperative purchasing occurs when entities join to accomplish all or part of the steps in the purchasing process. Cooperative purchasing is a system aimed at using group purchasing in an effort to increase buying power, reduce costs, and improve the quality of products and services available to members, and ultimately the children in the meal programs these agencies operate. The purpose of cooperative purchasing is to use the collective buying power and expertise to obtain the highest quality products at the best price.

A cooperative that is comprised solely of Program operators and/or the CNP State agency may procure as a group and must do so in compliance with the procurement standards that apply to the individual Program operator (7 *CFR* 210.21 and 2 *CFR* 200.318-.326). This includes complying with all State and local procurement standards, if more restrictive, and publishing solicitations and contracts with all terms, conditions, required contract provisions, as applicable, and clearly identifies all product descriptions, specifications, and estimated quantities required. For SFAs, the Buy American and cost-reimbursable provisions in 7 *CFR* 210.21(d) and (f) are required. Further, each program operator is responsible for monitoring vendor performance to ensure compliance with all contract provisions. Written agreements delineating roles and responsibilities are encouraged.

For more information on this subject, including a list of frequently asked questions, see the following web links:

- Institute of Child Nutrition (ICN) Procurement in the 21<sup>st</sup> Century Resource Manual is located on the ICN Web page located at <https://dpi.wi.gov/sites/default/files/imce/school-nutrition/pdf/procurement-in-the-21st-century.pdf>
- USDA Policy Memo SP 05-2017, CACFP 03-2017, SFSP 02-2017, Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third-party Services is located on the USDA Web page at [https://fns-prod.azureedge.net/sites/default/files/cn/SP05\\_CACFP03\\_SFSP02-2017os.pdf](https://fns-prod.azureedge.net/sites/default/files/cn/SP05_CACFP03_SFSP02-2017os.pdf)

## Intergovernmental/Interagency Agreements

2 *CFR*, Section 200.318, allows CNP operators to enter into intergovernmental or interagency agreements. It is important that CNP operators still conduct competitive procurements. Specifically, the following requirements must be met:

- Costs paid from the nonprofit school food service account are necessary, reasonable, and otherwise allowable per 2 *CFR*, Section 200.403 and the applicable cost principles in 2 *CFR*, Part 200, Subpart E.
- Procurement is conducted in a manner maximizing full and open competition, and consistent with federal procurement standards in 2 *CFR* Section 200.319.

All other California-Specific Guidance must be followed. For more information on this, see NSD MB CNP-01-2017 on the CDE SNP MB Web page at <http://www.cde.ca.gov/ls/nu/sn/mb.asp>.

## Market Basket Analysis

Representative samples of goods can be used for an evaluation of price when awarding a contract. This practice is sometimes referred to as a market basket analysis. When using this method of analysis, program operators must ensure their evaluation and award criteria are in compliance with the federal procurement standards. Refer to USDA Food and Nutrition Service (FNS) Policy Memorandum SP 04-2018 on the USDA Web page for guidance: <https://fns-prod.azureedge.net/sites/default/files/fdd/FD-144-market-basket.pdf>.

The USDA also held a webinar to provide clarity on Market Basket topic and a recording is now available on You tube at: <https://youtu.be/r0vlfC8HweQ>

The CDE will issue a management bulletin to provide additional guidance for SFAs regarding this topic.

## Geographic Preferences

The National School Lunch Act (NSLA) allows SFAs receiving funds through the CNPs to apply a geographic preference when procuring unprocessed, locally grown, or locally raised agricultural products. The geographic preference rule does not apply to any products that have been cooked, heated, canned or that have any additives or fillers. It can be applied to a wide array of products that meet the definition of unprocessed or minimally processed, such as various forms of fruits, vegetables, meats, fish, poultry, dairy, eggs, and grains (42 *United States Code*, Section 1758[jj]).

While this statute permits SFAs to apply a geographic preference to the maximum extent feasible and appropriate, it does not require them to purchase locally grown and locally raised agricultural products or to apply a geographic preference in their procurements of these products. The SFA responsible for the procurement has discretion to determine whether and how a geographic preference meets its needs (e.g., state, county region, etc.). Standards for food preservation techniques that are acceptable for geographic preference include:

- Cooling, refrigerating, and freezing
- Peeling, slicing, dicing, cutting, chopping, shucking, and grinding
- Drying and dehydrating
- Washing
- High water pressure washing or coldpasteurizing
- Packaging (i.e., eggs in cartons), vacuum packing, and bagging
- Butchering livestock, fish, and poultry
- Pasteurizing milk

**Note:** Milk served in the SNPs must be pasteurized and meet state and local standards. Pasteurized milk is the only dairy product for which geographic preference may be applied.

The application of geographic preference does not eliminate the requirement for procurement to be conducted in a manner that allows full and open competition, consistent with the sponsor's responsibility to be good stewards of federal funds. Geographic preference is meant to offer a defined advantage to products meeting a district's definition of local, but should not be seen as a guaranteed or sole requirement in the specification.

Refer to MB USDA-SNP-13-2009: Applying Geographic Preferences in Procurement located on the CDE NSD SNP MB Web page at

<http://www.cde.ca.gov/ls/nu/sn/mbusdasnp132009.asp>.

Questions and Answers, visit the CDE MB Web page at

<http://www.cde.ca.gov/ls/nu/sn/mbusdasnp192012.asp>.

USDA Geographic Preference fact sheet is located on the USDA F2S Web document at

[http://www.fns.usda.gov/sites/default/files/F2S\\_geo\\_pref.pdf](http://www.fns.usda.gov/sites/default/files/F2S_geo_pref.pdf).

## Buy American Provision Requirements

In all SNP solicitations and contracts, the USDA requires SFAs to include Buy American Provision language that states that only foods which are 100 percent domestically grown and processed will receive an approval for purchase. The SFA must also include the Buy American Provision requirement in its documented procurement procedures and retain records documenting any exceptions. All responsive and responsible bidders must acknowledge and agree to comply with the Buy American Provision.

Title 42, *United States Code*, Section 1760(n), the NSLA defines domestic commodity or product as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. Substantial means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States.

For products procured by the SFA for use in the CNPs and purchased with funds from the nonprofit school food service account, the food component is considered the agricultural commodity. The USDA FNS defines food component as any of the food groups that comprise reimbursable meals. Food components are:

- Meats and meat alternates
- Grains
- Vegetables
- Fruits
- Fluid milk

Please note that the Buy American Provision does not apply to nonagricultural products, such as paper products. Likewise, water is not considered a domestically grown commodity for the purpose of the Buy American Provision.

For information on the Buy American Provision best practices and requirements please see USDA Policy Memo SP-38-2017, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program on the [USDA School Meals Policy](#)  Web page.

## 8. Resources

### Procurement Process

For more guidance on the Procurement Process, please review the [procurement guidance video series link](#) on the CDE Procurement in School Nutrition Programs Web page at <https://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp>

- [Part 1 – Introduction to Procurement](#)
- [Part 2 - Developing a Scope of Work](#)
- [Part 3 - Formal Procurement Methods for School Nutrition Programs](#)
- [Part 4 - Informal Procurement Methods for School Nutrition Programs](#)
- [Part 5 - Vended Meal Contracts: Meal Patterns](#)
- [Part 6 - USDA Foods: Food Service Management Companies and Vended Meal Contracts](#)
- [Part 7 - Buy American Provision for School Nutrition Program](#)

## Management Bulletins

To review management bulletins published by the CDE, please visit the SNP MB Web page at <https://www.cde.ca.gov/ls/nu/sn/mb.asp>.

The MBs are posted in descending order by release date, and may be sorted by any column heading in ascending or descending order.

Here are a couple management bulletins that may be of interest to you:

Bulletin Number	Subject	Topic
CNP-01-2015	Written Codes of Conduct and Performance of Employees Engaged in the Procurement, Award, and Administration of Contracts	Codes of Conduct
SNP-07-2016	Distinguishing a Food Service Management Company from a Meal Vendor and Procurement Requirements Overview	Food Service Management

### Code of Conduct and Procurement Procedures

For more guidance on a Code of Conduct and Procurement Procedures, please view the checklist on the CDE Web page at <https://www.cde.ca.gov/ls/nu/pr/documents/procurechcklst.doc>

### Buy American Provision

The CDE SNP Web page contains guidance on the requirement for all SFAs to comply with the Buy American Provision. Additional Buy American guidance and their associated links are listed below.

- Buy American Guidance is located on CDE SNP Web page in the procurement tab at <https://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp#buyamerican>
- USDA Policy Memo SP-38-2017, Compliance with and Enforcement of the Buy Provision in the National School Lunch Program located on USDA Web page at <https://fns-prod.azureedge.net/sites/default/files/cn/SP38-2017os.pdf>
- CDE Training: Buy American Provision in SNPs Video  (Video; 25:23) is located on YouTube at [https://youtu.be/0BaWqhO7\\_ig](https://youtu.be/0BaWqhO7_ig)

## FSMC Procurement Services

For more information on the regulations regarding procurement of services offered by an FSMC, please visit the following Web pages:

- CDE NSD Web page at <http://www.cde.ca.gov/ls/nu/sn/fsmcproc.asp>
- USDA guidance for FSMC located on USDA web page at <http://www.fns.usda.gov/sites/default/files//cn/FSMCguidance-sfa.pdf>
- The CDE Cafeteria Fund Web page at <http://www.cde.ca.gov/ls/nu/sn/cafefundguide.asp>

## Child Nutrition Information and Payment System

The Child Nutrition Information and Payment System (CNIPS) may also serve as a resource to you. You will find the following PRU forms located in CNIPS Download Forms Section. The CNIPS Web page is located at <https://www.cnips.ca.gov/Splash.aspx>

- PRU 01** SFA Procurement Table
  - SFA Procurement Table with Instructions
- PRU 02** Vendor Paid List (VPL)
  - List of all vendors that the SNP operator entered into contractual agreements for goods or services during the review period
- PRU 03** Local Agency Procurement Review (LAPR) Documentation Requirement.
  - List of documents that may be required for LAPR review
- **PRU 04** Certification to not use Café Fund
  - Certification not to use Cafeteria Funds to pay the contracted Food Service Management Company
- PRU 05** RFP/Contract Checklists
  - RFP and Fixed-Price Model Contract Checklists
- PRU 06** *EC 49554* Compliance Certificate
  - Certification of Compliance with California Education Code Section 49554/Request to Contract with a Private Company for Meal Service
- PRU 07** Sample RFP FSMC Contract
  - Sample Request for Proposal and Model Fixed-Price Contract / Fixed Plus Price Contract / Cost Reimbursement Contract
- SFSC 01** Questionnaire about conducting a compliant procurement process with FSMCs

## Local Agency Procurement Review

For a list of steps in the Local Agency Procurement Review process, visit the CDE Web page at <https://www.cde.ca.gov/ls/nu/pr/stepsinprocess.asp> or contact the PRU by e-mail at [NSDProcurementReview@cde.ca.gov](mailto:NSDProcurementReview@cde.ca.gov)

You may also review the related policy memos issued by the USDA located on the USDA Web page at <https://www.fns.usda.gov/school-meals/policy>:

- USDA Policy Memo SP-04-2016 Local Agency Procurement Reviews
- USDA Policy Memo SP-03-2017 Draft Tool for Local Agency Procurement Reviews for School Food Authorities in SY2016-2017 -Revised
- USDA Policy Memo SP-39-2017 Local Agency Procurement Reviews for School Food Authorities

## U.S. Department of Agriculture Resources

The USDA provides resources and guidance on their Web page at <https://www.fns.usda.gov/>

The Farm to School Guide to Procuring Local Foods for CNPs is located on the USDA Web page at <http://www.fns.usda.gov/farmentoschool/procuring-local-foods>

## Contact Information

If you have any questions regarding this subject, please contact your SNP county specialist or child nutrition consultant (CNC) for further information. The SNP county specialist and CNC contact list is located in the CNIPS Download Forms section, Form ID Caseload. You can also call 800-952-5609, Option 2, to be directed to your SNP specialist or CNC.

If you have questions or would like assistance in preparing bid documents and contracts, please contact your PRU specialist. You can download the county specialist caseload list from the CNIPS Web site at <https://www.cnips.ca.gov> or you can contact Debbie Reeves, Office Technician, by phone at 916-319-0636 or by e-mail at [dreeves@cde.ca.gov](mailto:dreeves@cde.ca.gov) for assistance. You can also send an e-mail to [SFScontracts@cde.ca.gov](mailto:SFScontracts@cde.ca.gov).

If you have any questions on SNP cafeteria funds, please contact the SNP RMU by e-mail at [SNPCAFEFUNDQUESTIONS@cde.ca.gov](mailto:SNPCAFEFUNDQUESTIONS@cde.ca.gov).

For accounting and CSAM questions, contact School Fiscal Services Division by e-mail at [sacsinfo@cde.ca.gov](mailto:sacsinfo@cde.ca.gov).

If you have questions on procurement and FSMC contracts, please contact the PRU by e-mail at [SFSCONTRACTS@cde.ca.gov](mailto:SFSCONTRACTS@cde.ca.gov).

**This module provides the following Professional Standards:**

**Key Areas:** Operations (2000); Administration (3000)

**Learning Topics:** Purchasing (2400); Financial Management (3300);  
Human Resources and Staff Training (3400)

**Learning Objectives:** Purchasing food, supplies, and equipment through vendors (2430); Establish and document accounting procedures (3320); Develop employee training plan (3430)

**Instructional Minutes = 60**

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1. Mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410
2. Fax: 202-690-7442
3. E-mail: [program.intake@usda.gov](mailto:program.intake@usda.gov)

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