



Action Required

November 7, 2019

Re: Membership and Participation in the Region 10 Multi-Region Purchasing Cooperative

Dear Food Service Director Addressed:

Beginning SY 2019-2020, Multi-Region Purchasing Cooperative changed from a single Interlocal Agreement to a two-part Agreement. This newly designed packet, with this cover letter, includes two (2) documents: 1.) "General Interlocal Membership Agreement," (Membership Agreement), and 2.) "SY20-21 Interlocal Participation Agreement" (Participation Agreement) for the Region 10 Education Service Center Multi-Region Purchasing Cooperative (hereinafter the "R10MRPC").

The **General Interlocal Membership Agreement** (pages 3-9) is a multi-year "membership" agreement ongoing and commences on July 1st and extends through June 30th of each calendar year. The Membership Agreement will automatically renew each subsequent year for a single year term unless otherwise terminated by either party. The Membership Agreement is simply a "membership" and not a commitment to purchase off any of the R10MRPC procured bids. By signing the Membership Agreement, you are agreeing to the General Provisions and Roles and Responsibilities of being a member and will receive the option each year to sign a single-page "Participation Agreement" that indicates your purchasing commitment. **Please complete the General Interlocal Membership Agreement for your district and return the original signed document via mail to the Region 10 Education Service Center, 400 E. Spring Valley Rd., Richardson, Texas 75081, attention Angela McCrary or by fax: 972-348-1067, or scan and email: angela.mccrary@region10.org**

The **"Interlocal Bid Participation Agreement"** is an annual, single-page, "participation commitment" form that will need to be completed for each school year during which the district plans to purchase off of a R10MRPC formally procured bid. The Participation Agreement will be emailed to each "member" in the month of November for all participation commitments planned for the upcoming school year. The signed Participation Agreement information will be used for bid procurement purposes and "scope of bid." If you plan to purchase off any procured and awarded bid during the SY 2019-2020, **please complete the enclosed Interlocal Bid Participation Agreement (separate attachment) for your district and return the original signed document via mail to the Region 10 Education Service Center, 400 E. Spring Valley Rd., Richardson, Texas 75081, attention Angela McCrary or by fax: 972-348-1067, or scan and email: angela.mccrary@region10.org**

The R10MRPC is a fully self-funded entity through a Vendor Participation Fee. This fee is collected directly from the awarded commercial-only vendors. Fees are used to cover expenses related to the administration and operation of R10MRPC. Studies indicate that school districts benefit through cooperative participation with a considerable cost savings. While the purchasing power of the R10MRPC is significant, the costs of goods and services continues to rise annually. Even while industry costs have increased approximately 15 percent over the past two years, the MRPC has experienced only a 9 percent or less increase for the same time-period. Additional benefits of participating in the MRPC include reduced costs associated with advertising, paperwork, reduced time and worry spent on the bidding process, as well as Industry-specific workshops and training. MRPC members also benefit from the buying power of the Cooperative.

If I can be of further assistance in this matter, please call me at 972.348.1448. I am available to talk to your school board if needed. Thank you for your consideration for participation in the SY 20120-2021 R10MRPC.

Sincerely,

Keri Warnick
Program Coordinator

Enclosures

GENERAL INTERLOCAL MEMBERSHIP AGREEMENT

The following General Interlocal Membership Agreement is to be completed by all contracting entities (CE) that wish to enter into a general membership agreement with Region 10 ESC Multi-Region Purchasing Cooperative (R10MRPC).

This Membership Agreement is not a purchasing commitment. It is a one-time agreement that will renew automatically each subsequent year for a single-year term unless terminated by either party.

The Membership Agreement is kept on file with R10MRPC. Each school year, an “Interlocal Bid Participation Agreement” will be sent to all CE’s that have a General Interlocal Membership Agreement. This Interlocal Bid Participation Agreement will be a single-page “purchasing commitment” form for each specific school year. This purchasing commitment holds members responsible for purchasing from the bids chosen in order to allow for accurate bidding by R10MRPC and more competitive pricing by vendors.

If you wish to purchase from any formally procured bid by R10MRPC, you must complete and submit this General Membership Agreement along with the attached Bid Participation Agreement.

Region 10 Education Service Center
Multi-Region Purchasing Cooperative
GENERAL INTERLOCAL MEMBERSHIP AGREEMENT

This General Membership Agreement is entered into by and between the agencies shown below as contracting parties for an initial term, and will be automatically renewed each subsequent year for a single year term, in accordance with the section entitled "Membership Term" below, unless otherwise notified by either party in writing by not later than May 1st of any year with an effective date of June 30th (Effective Termination Date). The Member Contracting Entity (CE) shall be responsible for paying any vendors invoice's for goods and service's purchased by Member CE through the Effective Termination Date.

Contracting Parties

December 10, 2019	Region 10 Education Service Center	057-950
Date Entered into Agreement	Fiscal Agent	County District Number
	Denton ISD	000296
	District/Contracting Entity (CE)	CE County District Number

STATEMENT OF SERVICE'S TO BE PERFORMED

The Region 10 Multi Region Purchasing Cooperative (R10MRPC) organizes and administers the child nutrition cooperative purchasing and commodity processing program for CE's located in the state of Texas. Authority for such service is granted by Section 8.053 of the Texas Education Code, Chapter 791 of the Texas Government Code, and Chapter 271, Subchapter F, of the Texas Local Government Code. The goal of the cooperative is to obtain substantial savings on food service items through volume purchasing. The R10MRPC does not charge a membership fee.

GENERAL MEMBERSHIP:

General Membership is a multi-year membership in the R10MRPC. Each program year, every member will receive the Interlocal Bid Participation Agreement, which if signed, allows you to participate in any or all of the following bids. R10MRPC procures a variety of formal, competitive sealed proposals (RFP's) as a way to assist CE's with their fiscal budgetary needs. CE's have the option each year to commit to any bid (s) that best fits their needs. The selection of bid participation is a commitment to purchase from an R10MRPC awarded vendor and will be used in the scope of bid for each appropriate RFP. Prior to the release of any bid, each member will be asked for their anticipated quantities, although R10MRPC makes no guarantees of quantities to any vendor.

1. Commodity Processing
2. Commercial/Full-Line Grocery Purchasing
3. Manufacturer Direct-to-District Delivery
4. Small-wares
5. Kitchen Chemicals & Cleaning Products (products)
6. Safety Training and Sanitation Systems (services)
7. Fresh Meats and Produce
8. Fresh Bread
9. Milk/Dairy Products
10. Ice Cream Novelties
11. Chips and Snacks
12. Beverages (dispensed, canned, and plastic container)

LIMITATION OF AGREEMENT:

R10MRPC reviews this General Interlocal Membership Agreement each year to ensure compliance with United States Department of Agriculture (USDA) and Texas Department of Agriculture (TDA) regulations. If, following such review, the R10MRPC discovers that any provision contained herein is not in accordance with USDA and TDA regulation, R10MRPC will have 30 days to make all necessary updates and require that each CE sign a new Agreement. If R10MRPC does not amend the provision within the given timeframe, the CE may terminate this agreement on 10 days' written notice to R10MRPC.

GENERAL PROVISIONS:

1. The Parties agree to comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations in connection with the procurement activities and programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.
2. This Agreement shall be governed by the law of the State of Texas and venue for any dispute resolution shall be in the county in which the administrative offices of Region 10 ESC are located, which is currently Dallas County, Texas.
3. The R10MRPC reserves the right, but is not obligated, to add additional members and allow participation, because if adding a CE "materially changes the existing contract(s)" and, therefore, requires rebidding of said contract(s), the CE may not be permitted to participate in those affected contracts to avoid rebidding and possibly negatively affecting the membership in place at the time of the current contract(s) award. The membership of a new CE may become effective upon any new bids or rebids being awarded or as permitted at the sole discretion of the R10MRPC.
4. This Agreement and any addenda executed by the parties contains the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Parties. Modifications may be required by law or regulation, which shall require action by the R10MRPC and the CE. Failure to act by either party, within a reasonable period, on legally required modifications shall constitute good cause to terminate this General Interlocal Membership Agreement.
5. If any term(s) or provision(s) of this Membership Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Membership Agreement shall remain in full force and effect.
6. Before any Party may resort to litigation, any claims, disputes or other matters in question between the Parties to this Membership Agreement shall be submitted to nonbinding mediation. The selection of the mediator shall be mutually agreed upon, and the costs for such mediation borne equally between the Parties.
7. No Party to this Membership Agreement waives or relinquishes any immunity or defense on behalf of itself, its directors, officers, employees, and agents, as a result of its execution of this Membership Agreement or the performance of the functions and obligations set forth herein.
8. All parts of this Membership Agreement, when executed by both Parties, are binding upon the Parties and may be changed only by written agreement executed by authorized representatives of the Parties.
9. In accordance with USDA/TDA ARM Regulation 17.81, the R10MRPC is a Child Nutrition Program (CNP) Operator-Only Cooperative that is categorized as a "for profit cooperative". Consequently, at the end of the contract year, the R10MRPC must return all profit in excess of the profit margin as described in this Membership Agreement to the participating Covered Entities. The R10MRPC's "profit margin", for purposes of this Membership Agreement, shall be defined as the revenue received by the R10MRPC through the charging of the vendor fees set forth in the "Membership Fees" section below minus the expenses to the R10MRPC to operate the cooperative. The Coordinating Entity shall retain the profit margin; however, any revenue received in excess of the profit margin ("unanticipated profit"), if any, shall be distributed to the R10MRPC's participating members by the Fiscal Agent.

10. This Membership Agreement and any modification(s) may be executed in separate copies; however, the CE's copy of the Membership Agreement must be physically signed using a "wet signature." Electronic or typed signatures will not be accepted. This Membership Agreement may be exchanged and/or transmitted electronically via fax or scanned email.

Membership Term. This Membership Agreement shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this General Membership Agreement. The conditions set forth shall apply to the initial term and all renewal terms. The membership year for each purchasing cooperative program commences on July 1st and will extend through June 30th of each calendar year.

Membership Fees. No fee shall be charged to participating members of the R10MRPC.

The United States Department of Agriculture does not allow federal funds received by ESC Child Nutrition components to be used to support purchasing cooperatives. Therefore, the R10MRPC is a fully self-funded entity through a "Vendor Participation Fee" on all commercial sales. This fee is collected directly from the awarded vendors in the fixed amount of .0085 for every \$1.00 of revenue. R10MRPC "does not charge" any fees to the Commodity Processors. All fees are used to cover expenses related to the administration and direct operation of the Cooperative. Districts, even though they may incur these fees indirectly, pay no direct fee to the Cooperative for participation.

The parties agree that the payments under this Agreement and any related exhibits and documents are amounts that fairly compensate Coordinating Entity for the services or functions to be performed under the Agreement.

Authorization to Participate. R10MRPC and each CE represents and warrants, by the execution and delivery of the General Interlocal Membership Agreement, that they have obtained all requisite authority through governing board action to enter into and perform the terms of this Membership Agreement.

Cooperation and Access. Each party agrees that it will cooperate with any reasonable requests for information and/or records made by the other party. Each party reserves the right to audit the relevant records of the other party during normal working hours. Any breach of this Article shall be considered material and shall make the Membership Agreement subject to termination on ten (10) days written notice to the CE.

Primary and Secondary Contact. The CE agrees to appoint a primary and secondary contact who shall have express authority to represent and bind the CE, and R10MRPC will not be required to contact any other individual regarding program matters. Any notice to a primary or secondary contact shall be binding upon the CE. The CE reserves the right to change the contacts as needed by giving written notice to R10MRPC. Such notice is not effective until actually received by R10MRPC.

Defense and Prosecution of Claims. The CE authorizes the Fiscal Agent, only with respect to matters arising out of or contemplated by this Membership Agreement: (1) to control the commencement, defense, intervention or participation in a judicial, administrative or other governmental proceeding; (2) to represent the R10MRPC in an arbitration, mediation, or any other form of alternative dispute resolution; (3) to represent the R10MRPC in any other appearance necessary to protect the rights of the R10MRPC relating to actions concerning any past or current CE, including any appearances and actions in litigation, claim or dispute; and (4) to engage legal counsel and appropriate experts that, in the Fiscal Agent's sole discretion, will assist with such defense or prosecution of any action or claim in matters arising out of this Membership Agreement. The CE does hereby agree that any suit brought against R10MRPC, the Fiscal Agent, or a R10MRPC or Fiscal Agent employee or agent may be defended in the name of R10MRPC, Region 10 Education Service Center, or the CE by the counsel selected by the Fiscal Agent, in its sole discretion, or its designee, on behalf of and at the expense of the R10MRPC as necessary for the prosecution or defense of any litigation or claim. Full cooperation by the CE shall be extended to supplying any information needed or requested by the Fiscal Agent or R10MRPC in such prosecution or defense. Subject to specific revocation, the CE hereby designates the Fiscal Agent to act as a class representative on its behalf in matters arising out of this Membership Agreement.

Governance. R10MRPC shall be governed by the Fiscal Agent's Board of Directors ("Board") in accordance with applicable law and regulation. Procurement processes and procedures are governed by applicable law and regulation.

Limitations of Liability. The Fiscal Agent, its' endorers and servicing contactors, do not warrant that the operation or use of R10MRPC services will be uninterrupted or error free. The Fiscal Agent, its' endorers and servicing contractors, hereby disclaim any and all warranties, express or implied, in regard to any information, product or service furnished under this Membership Agreement, including without limitation, any and all implied warranties of merchantability or fitness for a particular purpose. The Parties agree that in regard to all causes of action arising out of or relating to this Membership Agreement, neither Party shall be liable to the other under any circumstances for special, incidental, consequential, or exemplary damages, even if it has been advised of the possibility of such damages.

Notice. Any written notice to the R10MRPC or the Fiscal Agent shall be made by: first class mail, postage prepaid and delivered to the Multi-Region Purchasing Cooperative, Region 10 Education Service Center, 400 E Spring Valley Rd, Richardson, TX 75081-1300; faxed to 972 348-1449, Attn: Keri Warnick (contact person); or emailed to keri.warnick@region10.org with a copy to sue.hayes@region10.org.

Acceptance of USDA Foods Sent for Further Processing. R10MRPC, through the Fiscal Agent, is granted the right to issue a cooperative bid/proposal for the processing of selected commodity foods donated by participating members. R10MRPC, through the Fiscal Agent, is further granted the right to enter into a Contract for Services with the processor(s) receiving the processing award(s) for agreed upon processed end-products, for the purpose of executing a service agreement on behalf of participating members. Participating members will have the right and responsibility to accept the processed end-product(s) for the life of the contract between R10MRPC, through the Fiscal Agent, and the processor for all commodity foods donated to, and for which processing was subsequently procured through, the R10MRPC. Excess commodities may be distributed according to USDA or TDA regulation and guidance.

Certificate of Authority/FND-101 Form. The Texas Department of Agriculture (TDA) now requires each participating Contracting Entity (CE)/School District that plans to commit entitlement to the USDA processed commodity program, to submit an FND-101 form to allow their purchasing co-op access to view and enter commodity pounds into the participating member's TX-UNPS Food Distribution Program (FDP) account. An FND-101 form must be signed by the Superintendent of the CE for each employee of the co-op. An FND-101 form for each R10MRPC/Fiscal Agent employee will be included with the Interlocal Bid Participation Agreement.

Payment for Goods. Each Party, paying for any goods or services under this Agreement or related to this Agreement, must pay for such goods and services from available current revenues only. Region 10 Education Service Center

PARTY ROLES AND RESPONSIBILITIES:

Role of the R10MRPC, through the Fiscal Agent:

1. Provide for the organizational and administrative structure of the program.
2. Provide staff time necessary for efficient operation of the program.
3. The R10MRPC shall coordinate the Competitive Procurement Process for all Awarded Contracts.
4. The R10MRPC shall follow the local, state, and federal procurement guidelines as listed below:
 - a. The Fiscal Agent requires Board of Directors' approval on all R10MRPC bid award recommendations.
 - b. State of Texas Education Code 44.031 Purchasing contracts.
 - c. The Code of Federal Regulations, 2 CFR 200.218-200.326
 - d. Education Department General Administrative Regulations (EDGAR) as the guidelines pertain to Purchasing Cooperatives' procuring on behalf of its' CE's. Currently EDGAR refers and requires Child Nutrition Food Purchasing Cooperatives to adhere to 2 CFR 200.218-200.326
 - e. Form 1295 will be required to be filled out and filed with the Texas Ethics Commission by all awarded vendors and will be managed by the Fiscal Agent's Business Office.
5. The R10MRPC shall send solicitations for the Further Processing of USDA foods to all companies found on the Texas Department of Agriculture's (TDA) "Approved List of Vendors" without limitations.

6. The R10MRPC shall enter into a detailed agreement with distributors that provide the distribution of processed end-products containing USDA Foods that includes language to ensure proper resolution of errors such as data, pricing, product, reports, etc.
7. The R10MRPC shall do the following in regard to USDA Foods:
 - a. Track and assist CE's with management of their USDA Foods inventory balances to ensure compliance with TDA and USDA Foods inventory requirements.
 - b. Assist CE's with Sales Verifications of end products sold through a distributor, including but not limited to verification of rebates, discounts and credits.
 - c. Assist CE's with the utilization of carryover pounds to avoid swept inventory on November 30th.
 - d. The R10MRPC shall provide CE's with information on commodity processing, including, but not limited to, anticipated delivery dates, product recalls or production issues, discontinued products and replacement recommendations.
 - e. The R10MRPC shall make all surveys open to the CE's as surveys are opened by TDA.
 - f. Provide the list of commodity items to CE's for purposes of obtaining quantity requests. This is done using an online software program.
 - g. Receive quantity requests from CE's for commodity processing through district entries into the online software and prepare appropriate quantity totals by item.
 - h. Provide a delivery schedule, on behalf of each CE, for all selected USDA Foods for Further Processing to each processor and distributor based on information collected from each CE.
8. R10MRPC assumes no responsibility for failure of delivery by vendors, however, R10MRPC will assist all CE's with service and product quality issues to ensure all vendors adhere to the terms and conditions of the awarded contract.
9. Initiate and implement activities related to the bidding and vendor selection process. Competitive bidding procedures for Texas public schools using Child Nutrition federal funds will be strictly followed.
10. Provide CE's with procedures for ordering, delivery, and billing.
11. Mediate problems/concerns between vendors and CE's.
12. Provide CE's access to all records, reports, and documents to ensure rebates, discounts and other applicable credits will accrue to the CE.
13. Make available or provide easy access to all procurement documents created and received for each awarded RFP and vendor, as required and in compliance with State Agency Administrative and Procurement Reviews.
14. Act ethically at all times and in accordance with all federal, state, and local guidelines.

Role of the CE:

1. Commit to the General Provisions and Roles and Responsibilities by authorization of the governing body and by execution by an approved official in the appropriate space on the attached form.
2. Designate a primary and secondary contact.

If an Interlocal Bid Participation Agreement is signed by the CE for any given single-year term:

3. Commit to purchasing on each and all bid categories selected on the Interlocal Bid Participation Agreement on an as needed basis.
4. Provide an estimated quantity request for each of the products desired through use of the online required software or as requested by the Program Coordinator during any single-year term of Participation.
5. Comply with all USDA and/or TDA regulations, including, but not limited to, Roles and Responsibilities for Further Processing of USDA Foods or any other Annual Agreement per USDA or TDA.
6. Prepare purchase orders issued to the appropriate vendor from the official award list provided by R10MRPC.
7. Accept shipments of products ordered from vendors in accordance with standard purchasing procedures.
8. Address product warranties and product qualities with manufacturer.
9. Pay vendors net amount due within agreed upon terms after receipt of a correct monthly statement.
10. Participate in bid evaluation committees for the RFP's that the district is utilizing. Evaluation committee meetings will include, but not be limited to, face-to-face group meetings, online voting, or any other form of participation as requested by the R10MRPC.
11. Act ethically at all times and in accordance with all federal, state, and local guidelines, as well as R10MRPC Member Roles. The R10MRPC shares information with participating members that at times is considered

confidential and proprietary. Members may be asked to sign Non-Disclosure Agreements and agree to the terms set forth in those agreements. Future membership in the R10MRPC may be jeopardized based on unethical handling of sensitive R10MRPC and/or vendor information.

12. Attend R10MRPC meetings and training classes to stay informed of the cooperative's processes and services offered. Training classes are specific to some of the "tools" offered by R10MRPC. Attending meetings and classes helps ensure your success as a CE in the R10MRPC.
13. Participates in a Member Advisory Committee through selection or appointment. The Member Advisory Committee is a small committee of R10MRPC participating members formed every 2 years. The Advisory Committee serves as the liaison for all participating members when conflict or concern arise in regard to R10MRPC, and annually reviews all procurement practices by the R10MRPC to ensure compliance in all areas.
14. The following roles will apply to participating members who commit entitlement dollars for the USDA processed commodity foods:
 - a. The CE shall access the Texas Unified Nutrition Program System (TX-UNPS) Food Distribution Program (FDP) Module on a regular basis to effectively manage USDA Foods entitlement, food requests, allocations, and as applicable, storage and delivery of USDA Foods from assigned state-contracted warehouse.
 - b. The CE shall track and manage USDA Foods inventory balances to ensure compliance with TDA and USDA Foods inventory requirements, i.e., inventory levels shall not exceed a six (6) month supply at any given time; access processor tracking systems (K12 and ProcessorLink) on a regular basis; and report inventory issues to R10MRPC.
 - c. The CE shall conduct Sales Verifications of end-products sold through a distributor, including but not limited to verification of rebates, discounts and credits.
 - d. The CE shall maintain copies of the original Child Nutrition ("CN") Label from the product, carton; or a photograph of the CN Label as it appears on the original product carton if available.
 - e. The CE shall attend and/or access online trainings provided by TDA on the management of the USDA Foods program to obtain the latest information on the program.

Signature and Authorization form: By signing this page, the CE confirms agreement with all membership terms and roles and responsibilities (as stated on pages 3-8):

Denton Independent School District and the Region 10 Education Service Center/Fiscal Agent,
District/Contracting Entity (CE)
do hereby enter into this General Interlocal Membership Agreement and intend to be bound by the provisions set forth herein for an initial term, to be renewed automatically each subsequent year for a single-year term unless otherwise terminated By either party in accordance with the terms set forth in the Agreement.

District’s Authorized Representative Signature: _____

Date: _____

<u>Denton Independent School District</u> District/CE	<u>Region XI</u> ESC Region	<u>000296</u> CE ID#
<u>Name of Authorized Representative (Superintendent)</u>	<u>Signature of Authorized Representative</u>	
<u>Title of Authorized Representative</u>	<u>Date</u>	
<u>1307 N. Locust, Denton, Texas 76201</u> Mailing Address, City, State, Zip Code	<u>Denton</u> County	
<u>Chris Bomberger</u> Primary Food Service Contact	<u>940-369-0272</u> Primary Contact Phone	
<u>cbomberger@dentonisd.org</u> Primary Contact Email Address		
<u>Beverly Martin</u> Secondary Food Service Contact	<u>940-369-0275</u> Secondary Contact Phone	
<u>bmartin3@dentonisd.org</u> Secondary Contact Email Address		

For Region 10 MRPC Use Only

<u>R10MRPC Authorized Signature</u>	<u>Keri Warnick</u> R10MRPC Contact Person	<u>Date</u>
<u>Program Coordinator</u> Title of Contact Person	<u>972-348-1448</u> Phone	

Interlocal Agreement
Region 10 Education Service Center
Multi-Region Purchasing Cooperative

