

## Child Nutrition and Purchasing

### Description:

The goal of the Cooperative is to obtain substantial savings on specific food service items for member districts through volume purchasing. The highest quality products for the best possible prices will be sought. The district should benefit through cost savings, meeting federal and state procurement regulations, and receiving items meeting federal Child Nutrition Program requirements. Participating Education Service Centers will organize and administer The West Texas Food Service Cooperative (Cooperative) with Region 17 Education Service Center acting as the fiscal agent (Coordinating Center).

This agreement is entered into pursuant to the authority granted by Title 7 (Agriculture) of the Code of Federal Regulations, Chapter 791 of the Texas Government Code, and Chapter 8 of the Texas Education Code.

### EDGAR COMPLIANCE

**CONTRACTS INVOLVING FEDERAL FUNDS:** Region 17 ESC may be unable to determine which of its agreements/contracts will be used by cooperative members using federal funds at the time of the procurement process. Therefore, Region 17 ESC intends to competitively procure each contract awarded by Region 17 ESC under Section 44.031 of the Texas Education Code and intends to comply with EDGAR and USDA regulations for every procurement action. To comply with EDGAR, Region 17 ESC will make an independent estimate of the value of goods or services in the current market before receiving bids or proposals. After Region 17 ESC receives bids and proposals, but before awarding a contract, Region 17 ESC will also conduct a price or cost analysis and document its findings. For contracts at or above \$50,000 cooperative members must verify that Region 17 ESC fulfilled its requirement to conduct a cost or price analysis in order to benefit from the ability to purchase goods and services from its purchasing cooperatives directly without the need for additional procurement activities or documentation. Region 17 ESC will provide its *Independent Estimate Determination Form* and *Determination of Cost or Price Reasonableness Form* to a cooperative member upon request, but Region 17 ESC recommends that when circumstances necessitate separate evaluation of lump-sum pricing, cooperative members also conduct an independent evaluation of cost or price reasonableness tailored to the cooperative member's specific purchases so that the cooperative member can independently determine the reasonableness of the cost/price of the particular purchase. Stated differently, if the cooperative member's verification of Region 17 ESC's compliance with EDGAR reveals that the lump-sum price includes goods or services for which Region 17 ESC could not have performed a cost or price analysis, the cooperative member should conduct an independent cost or price analysis.

#### I. Term of Contract

The term of this contract shall be from the date of acceptance by authorized District personnel through July 31, 2026. The participating party(ies) may with mutual agreement among all other participating parties, rescind the Commercial Purchasing and/or Full-Service component of this contract with a thirty (30) day written notice. If participating in the Commodity Processing component of this contract, the participating party is required to fulfill the contractual obligation until all processed commodity commitments are received. For general termination information, see Section VII.

**A signed agreement or at least a verbal commitment from district must be received by the WTFSC by February 15, 2025 for district to participate in commodity processing for contract year.**

#### II. General Provisions

In accordance with United States Department of Agriculture (USDA) regulation and Texas Department of Agriculture (TDA) guidance in the Administrator's Reference Manual Section 17c, the Cooperative 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 Cooperative must return all profit in excess of the profit margin as described in the contract to the participating Cooperative's members, i.e., Contracting Entities. The Cooperative's "profit margin", for purposes of this Agreement, shall be the revenue received by the Cooperative through the charging of the vendor fee set forth in "Fee" section below minus the expenses to the Coordinating Center to operate the Cooperative. The Coordinating Center shall retain the profit margin; however, revenue received in excess of the profit margin ("unanticipated profit"), if any, shall be distributed to the Cooperative's members.

#### III. Fee

No fee shall be charged to members of the Cooperative.

The USDA does not allow federal funds received by ESC Child Nutrition components to be used to support purchasing cooperatives. Therefore, the Cooperative is a totally self-funded entity. To provide this revenue, a fee of .85% of each district Commercial Purchase is charged to the vendor through a Vendor Participation Fee. Through the Commodity Processing bids, a per-truckload fee of \$500.00 is charged to the processor as an Administrative Processing Fee. 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.

#### IV. ESC 17 (Coordinating Center) will be responsible for the following:

- Provide for the organizational and administrative structure of the cooperative.
- Provide for staff time necessary for efficient operation of the cooperative.
- Host Regional Advisory Board meetings for commercial bid purchasing and commodity processing components.
- Provide onsite and/or technology based regional and/or area trainings as requested/necessary.
- Initiate and implement activities related to the bidding and vendor selection process, in accordance with formal procurement procedures for Texas public schools.
- Review annual fiscal report with member districts at a Fall Advisory Board Meeting.
- Provide districts with Service Report/Product Comment Forms to address quality assurance and vendor complaint issues consistently.
- The Cooperative will not be held responsible for product warranties, product qualities, failure to deliver by vendor(s), or failure of payment to vendor(s) by participating members.

- Manage awarded contracts including:
  - Utilizing cost/price analysis
  - Maintaining awarded catalog(s)
  - Monitoring addition of new goods and/or services
  - Monitoring value of contract(s), i.e., Material Change
    - Material change means a modification that exceeds and/or alters the terms of the original contract between WTFSC, its cooperative members, and Vendor in the amount of 10% of total contract value.

**V. Role of the participating district:**

- Commit to participate in the Cooperative by resolution of the governing body.
- Designate a contact person for the Cooperative.
- Return all necessary forms to the Cooperative in a timely fashion with appropriate signatures.
- Abide by directives and decisions of the Regional Advisory Boards and Coordinating Center.
- Abide by Texas Department of Agriculture Roles and Responsibilities for Further Processing of USDA Foods as per the Contract Packet via TX-UNPS.
- Prepare purchase orders issued to the appropriate vendor(s)/processor(s) from the official award list provided by the Cooperative.
- Accept shipments of products in accordance with standard HACCP delivery procedures and the Cooperative delivery agreements.
- Pay vendor(s) as per awarded terms and conditions unless prior arrangements have been made between the participating member and the vendor(s). All deliveries will be made in accordance with the specified delivery schedule in each bid document.
- Manage awarded contracts including:
  - Notifying WTFSC of issues regarding vendors and product quality by submitting the Service Report/Product Comment Forms as necessary
  - Following proper procedures to request additional items to be added to bid catalog
  - Verify accuracy of invoices and authorizing payments consistent with contract terms
  - Monitor any changes to the contract through the amendment process allowed by the terms of the contract

**VI. Amendments**

This agreement may be amended only by agreement of both parties. Amendments may include:

- Change in Contract Options
- Change in Designee

**VII. Termination of Contract**

This agreement may be terminated for any of the following reasons:

- The Cooperative member submits a written thirty (30) day notice to the ESC terminating the Agreement.
- The Coordinating Center gives the district thirty (30) days written notice that the district has failed to uphold outlined roles of the agreement.
- The Coordinating Center gives the district thirty (30) days written notice of regulation changes that void the contract

**VIII. Additional Info**

- Compensation. The parties agree that the contractual payments under this Agreement and any related exhibits and documents are amounts that fairly compensate ESC 17 for the services or functions performed under the Agreement.
- Severability. If any portion of this Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.
- Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Lubbock County, Texas, unless otherwise mandated by law.
- Warranty. By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

Commercial Food Purchasing (Through awarded distributor. Example: Labatt)

Commodity Processing (Must participate in the USDA/TDA commodity processing program)

Full-Service Delivery (Milk, Bread, Novelties, etc. shipped direct to CE. Example: Gandy's)

Select the Full-Service Delivery Services you will be Utilizing:

Designee (click here to enter designee information)

Child Nutrition Director or Cafeteria Manager authorized to coordinate all Cooperative activities with WTFSC/ESC 17 staff

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Contact Information

Name  , Phone#  , PO#