

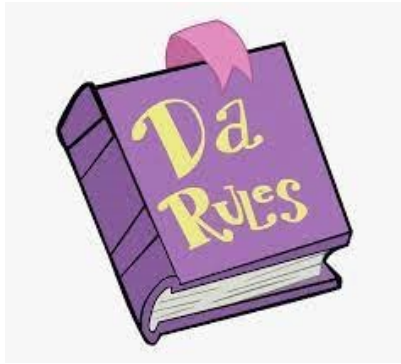
**Cooperative Purchase Group
Piggy Back
Material Change
Contract/Agreement
Market Basket Method
Monitoring a Contract
Interagency Agreements**

**Child and Adult Nutrition Services
January 2023**



Requirements





Procurement Rules

- ▶ School food authorities must comply with:
 - 2 CFR 200;
 - USDA Program regulations (7 CFR Part 210, Part 215, and Part 220), guidance, and instructions;
 - State law, regulations, and policies that are not in conflict with Federal requirements; and
 - Local law, regulations, and policies that are not in conflict with Federal requirements.

Procurement Methods

Informal

Small Purchase
(Three bids and a buy)
Under \$25,000 for
goods and services
Micro Purchase
Up to \$10,000

Formal

\$25,000 and higher for
goods and services
\$250,000 and higher for
perishable goods
IFB - Invitation For Bid
RFP - Request For
Proposal



Cooperative Purchasing Groups



- Child Nutrition Program (Agencies) Only
- Agents
- Third party entities

State procurement agency agreements

Interagency agreements

Group purchasing organization

Purchasing Group	Characteristics	
SFA-only and/or CNP State Agency Cooperative Agreements	<ul style="list-style-type: none"> ■ Contains only SFA and sometimes CNP State agency. ■ Not a method of procurement. ■ Agreement to competitively procure goods and services jointly. ■ May include fixed fee to cover overhead or prorated share of administrative costs. 	
Agent	<ul style="list-style-type: none"> ■ A person or business authorized to act on a client's behalf for the procurement of necessary goods and services. ■ Must be contractually required to conduct all procurement using the Program and government-wide regulations, following the most restrictive micro-purchase and small purchase thresholds, and with client's interest solely in mind. ■ Agent's services must be competitively procured. 	
Third-Party Entities	State Procurement Agency Agreements	<ul style="list-style-type: none"> ■ Not exclusively CNPs. ■ State procurement agency procures for State facility needs. ■ SFAs may consider the price for the State's contracted sources as one source when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids or competitive proposals.
	Inter-agency Agreements	<ul style="list-style-type: none"> ■ Purchasing group of several State agencies, agreeing to procure goods and services together. ■ May include public, private and nonprofit entities. ■ SFAs may consider the price for the group's contracted sources as one source when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids or competitive proposals. ■ SFAs may purchase from group's contracted sources using the vendor price as one source when conducting a competitive procurement.
	Group Purchasing Organizations	<ul style="list-style-type: none"> ■ Commonly fall under heading of GPOs. ■ Often includes entities such as public and private schools, hospitals, universities, law enforcement, public works, etc.
	Group Buying Organizations Third-Party Vendors	<ul style="list-style-type: none"> ■ Could be private for-profit or nonprofit. ■ Typically includes a membership fee paid by members to cover administrative costs. ■ Members may be granted access to the GPO price list of products and services. ■ SFAs may consider the price for the GPO's contracted sources as one source when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids or competitive proposals.

Purchasing Group	Procurement Responsibilities
SFA-only and/or CNP State Agency Cooperative Agreements	<ul style="list-style-type: none"> ■ Joining such a cooperative does not require competition; ■ SFAs agree to competitively procure goods and services jointly consistent with 7 CFR 210.21 and 2 CFR 200.318-.326; and ■ If product is not purchased by cooperative or not available from procured source, SFA must conduct separate competitive procurement procedures consistent with 7 CFR 210.21 and 2 CFR 200.318-.326.
Agent	<ul style="list-style-type: none"> ■ Agent must be selected through competitive procurement based on anticipated agent fee; ■ Agent fees must be fixed, not a percentage of cost; ■ Agents must follow procurement procedures consistent with 7 CFR 210.21 and 2 CFR 200.318-.326; ■ Agent must have the SFA's best interest in mind; ■ Agent must not have any conflict of interest; and ■ SFAs must monitor contractor (agent's) performance.
State Procurement Agency Agreements	<ul style="list-style-type: none"> ■ Entering into an agreement with State procurement is not a competitive procurement process; ■ A State procurement agency procures for State facility needs using the State's procurement regulations; ■ SFAs may consider the price for the State's contracted sources as one source when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids or competitive proposals; and ■ SFAs must ensure that their procurements follow purchasing procedures consistent with 7 CFR 210.21 and 2 CFR Part 200.318-.326.
Inter-agency Agreements	<ul style="list-style-type: none"> ■ Entering into an inter-agency agreement is not a competitive procurement process; ■ Members mutually develop and publish solicitations for common goods and services; and ■ SFAs may consider the price for the entity's contracted sources as one source when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids or competitive proposals.
Group Purchasing Organizations	<ul style="list-style-type: none"> ■ GPO must be selected through competitive procurement using the applicable procurement procedures based on the membership fee;
Group Buying Organizations	<ul style="list-style-type: none"> ■ Typically includes a membership fee paid by members to cover administrative costs and gain access to price lists; and
Third-Party Vendors	<ul style="list-style-type: none"> ■ SFAs may consider the price for the GPO's contracted sources as one source when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids, or competitive proposals.

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Agent	<ul style="list-style-type: none"> ■ A person or business authorized to act on a client's behalf for the procurement of necessary goods and services. ■ Must be contractually required to conduct all procurement using the Program and government-wide regulations, following the most restrictive micro-purchase and small purchase thresholds, and with client's interest solely in mind. ■ Agent's services must be competitively procured.
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Agency Agreements	procurement process; <ul style="list-style-type: none"> A State procurement agency procures for State facility needs using the State's
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Agent	<ul style="list-style-type: none"> Agent must be selected through competitive procurement based on anticipated agent fee; Agent fees must be fixed, not a percentage of cost; Agents must follow procurement procedures consistent with 7 CFR 210.21 and 2 CFR 200.318-.326; Agent must have the SFA's best interest in mind; Agent must not have any conflict of interest; and SFAs must monitor contractor (agent's) performance.
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Organizations Third-Party Vendors	costs and gain access to price lists; and <ul style="list-style-type: none"> SFAs may consider the price for the GPO's contracted sources as one source when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids, or competitive proposals.
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Interagency Agreements/Contracts

Vended Meal Contract

Multiple School Food Authority

Vended Meal Contract

A



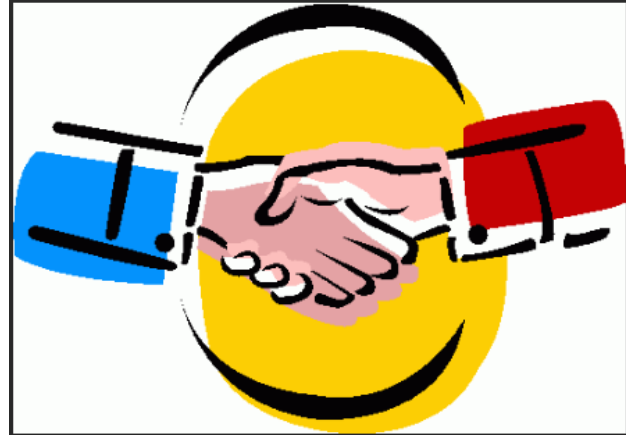
B

Agency A contracts with Agency B to provide meals only.

Agency B operates their own foodservice program. They purchase vended meals only.

Multiple School Food Authority Contract

A



B

- Agency A operates multiple school foodservice programs under the same NSLP/SBP agreement.

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State	<ul style="list-style-type: none"> ■ Not exclusively CNPs.

one source when conducting a competitive procurement.

Group Purchasing Organizations	<ul style="list-style-type: none"> ■ Commonly fall under heading of GPOs. ■ Often includes entities such as public and private schools, hospitals, universities, law enforcement, public works, etc. ■ Could be private for-profit or nonprofit. ■ Typically includes a membership fee paid by members to cover administrative costs. ■ Members may be granted access to the GPO price list of products and services. ■ SFAs may consider the price for the GPO's contracted sources as one source when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids or competitive proposals.
Group Buying Organizations	
Third-Party Vendors	

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Group Purchasing Organizations	<ul style="list-style-type: none"> ■ GPO must be selected through competitive procurement using the applicable procurement procedures based on the membership fee; ■ Typically includes a membership fee paid by members to cover administrative costs and gain access to price lists; and ■ SFAs may consider the price for the GPO's contracted sources as one source when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids, or competitive proposals.
Group Buying Organizations	
Third-Party Vendors	

	when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids or competitive proposals.
Group Purchasing Organizations	<ul style="list-style-type: none"> ■ GPO must be selected through competitive procurement using the applicable procurement procedures based on the membership fee;
Group Buying Organizations	<ul style="list-style-type: none"> ■ Typically includes a membership fee paid by members to cover administrative costs and gain access to price lists; and
Third-Party Vendors	<ul style="list-style-type: none"> ■ SFAs may consider the price for the GPO's contracted sources as one source when the SFA conducts a competitive procurement process using micro- or small purchase procedures, sealed bids, or competitive proposals.



Food and
Nutrition
Service

Park Office
Center

3101 Park
Center Drive
Alexandria
VA 22302

DATE: October 19, 2016

MEMO CODE: SP-05-2017, CACFP 03-2017, SFSP 02-2017

SUBJECT: Q&A: Purchasing Goods and Services Using Cooperative
Agreements, Agents, and Third-Party Services

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States



Advantages:

- Increased purchasing power to effect reductions in:
 - Food and supply costs
 - Labor costs
 - Administrative costs
- Improve quality and variety of products purchased
- Possible direct to manufacturer Purchasing
- Combined expertise – shared menus



Disadvantages:

“Logic clearly dictates that the needs of the many outweigh the needs of the few.” SPOCK

- Consensus among members
 - Substitute a favored product
 - Eliminate a menu item
 - Purchase favorite items independently
- Fewer deliveries
 - Required to purchase greater quantity
 - Storage limitation
- Cost increase
 - Consensus of group may require higher quality product



Is a Cooperative Contract Necessary?

- Can SFAs combine purchases without being in a cooperative?
If State or Local Law does not require that SFAs establish a separate legal entity to cooperatively purchase items, then SFAs may go out to bid “together” for like items to increase purchasing power thereby decreasing food and in some cases administrative costs.
- Cooperatives are NOT exempt from following program procurement regulations.
- SFAs are ultimately responsible for full and open competition.

Question

Is it okay for an SFA to join or piggyback off an existing agreement?

- Yes
- No
- It depends on the Solicitation.



Question

Is it okay for an SFA to join or piggyback off an existing agreement or coop?

- Yes
- No
- It depends on the Solicitation.**





Piggy Back – Not just a kid ride anymore

Allows additional parties to order items on an awarded contract.

Solicitations must include a provision allowing additional parties to piggyback on an award. That language will be in the contract as well as specifying applicable limitations (e.g., dollar value or limit to the number of additional parties that may be added) This will minimize the potential of creating a material change.



Material Change

A change is made to a contract that **alters the terms, value, or conditions of the contract**. The change is substantial enough that other potential contractors who responded to the solicitation may have bid differently and more competitively if they had known about the altered terms and conditions.

Undermines full and open competition by denying all contractors an equal opportunity to compete.

Must rebid the contract when a change in purchasing products and/or services is inconsistent with the underlying solicitation on which the contract was based. A separate solicitation for additional items may be considered.

Material Change, continued...

The solicitation must mirror the contract.

If piggy backing or allowance of additional items is anticipated, the solicitation must state the possibility.

However:

A solicitation that is written to be an open-ended procurement of additional products and/or services is likely to be an inappropriate procurement. An increase to the value of the contract should be capped to a percentage your Agency does not consider a material change. Typical amount is up to 10% of the total contract value.



■ Material Change or Not?

Scenario 1 – Agency dropped requirement for twice per week delivery

Scenario 2 – Agency began vending meals to nearby school

Material Change Determination

- Substantial Increase or Decrease to the Value of the Contract
- Increase or Decrease in the Products and/or Services
- New Products and/or Services
- Would a business have bid differently if they had known of the changes

Contracts/Agreements





Basis for Comparison

Agreement

Contract

Meaning

When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement.

When an agreement is enforceable by law, it becomes a contract.

Elements

Offer and Acceptance

Agreement and Enforceability

In writing

Not necessarily

Written and signed by authority to ensure conditions are met.

Legal obligation

Does not create legal obligation
Rather a 'meeting of the minds'

Creates legal obligation



Why a contract

Serve as a record of commitments for both parties

- Mitigate risk
 - Interests are protected – both the agency and the vendor
- Prevent conflicts
- Helps your agency maintain compliance

Three Award Methods

There are three basic types of contract awards for multiple item purchases:

- Line Item
- Bottom Line/Prime Vendor
- Market Basket



Line Item Multi Item Bid

Line item awards are used in small bid and sealed bid procurements when the bid is awarded based on price only. In a line item award purchases are awarded to the vendor providing the lowest price for individual items in a multi-item procurement. Multiple vendors may be awarded purchases from a multi-item solicitation.

Item No.	Product Category	Description	Mfr. Number	Pack	Quantity	Bid Price	Total
1	Meat--Beef	Philly Steak, Seasoned, Fully Cooked, Gluten free, specify weight of product needed to equal one 2 m/ma serving, Calories not to exceed 175, sodium not to exceed 450 mg. sodium. no transfat.	JTM CP5813 Equal or better	167 servings 30# cs.			WIN
2	Meat--Beef	Franks-100% Beef Franks, 8 links/lb. 1, 2 oz. frank = 2 m/ma, gluten free. Calories not to exceed 175, sodium to not exceed 370mg no added trans fat,	Cloverdale 123312 Equal or better	10# cs/80 ct.			WIN
3	Meat--Chicken	Chicken. WG Chicken Corn Dog, 4 oz. each Corn dog provides 2 M/MA and 2 OEG. 50% or > whole grains by weight or have whole grains as the first ingredient, calories not to exceed 260 calories, sodium not to exceed 410 mg per serving, 0 trans fat	Foster Farms 95150 Equal or better	72 ct			
4	Meat--Chicken	Chicken, WG Chicken Pop Dogs, Each pop dog is approximately 0.67 and 6 pop dogs (1 serving) = 2 m/ma and 2 OEG. Calories not to exceed 200 calories per serving, total fat grams not to exceed 10 grams, 50% or > whole grains by weight or have whole grains as the first ingredient, Sodium not to exceed 300 mg. per serving, no added transfat, mfg. frozen shelf life is 365 days from date of pack.	Foster Farms 96086 Equal or better	2, 5# lb. bags/cs. Approx. 48			WIN
5	Meat--Chicken	Chicken. Fulled Cooked. All Natural Grilled Chicken Breast Filet with Rib Meat, Gluten Free. 1, 3 oz. serving (by weight) =2 to 2.5 oz. m/ma. Calories per serving not to exceed 140, sodium per serving not to exceed 200 mg.	Cloverdale 126753 Equal or better	2/5# bags approx. 50			
6	Meat--Chicken	Chicken. FC Chicken Breast Fritters with Rib Meat, 13 pieces = approx. 4.29oz serving size. Serving size provides 2 m/ma and 2 OEG. Calories per serving not to exceed 220, sodium per serving not to exceed 550 mg. no added trans fat.	Advance Pierre #68157 Equal or better	4/5# bags			
7	Meat--Pork	Pork, Shoulder Pulled. No Sauce. Gluten Free. 3 oz. serving (by weight) =2 M/MA. Calories not to exceed 200 per serving, sodium not to exceed 310 mg. per serving. No added trans fat	John Morrell # 7010066904 Equal or better				

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5	Meat--Chicken	Chicken. Fulled Cooked. All Natural Grilled Chicken Breast Filet with Rib Meat, Gluten Free. 1, 3 oz. serving (by weight) =2 to 2.5 oz. m/ma. Calories per serving not to exceed 140, sodium per serving not to exceed 200 mg.	Cloverdale 126753 Equal or better	2/5# bags approx. 50			WIN
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Lowest Total Amount Wins

Memo Code: FD-144, SP04, SFSP01, CACFP04-2018

Market Basket Analysis when Procuring Program Goods and Modifying Contracted-For Product Lists

OME > USDA FOODS IN SCHOOLS

EO Guidance Document

FNS-GD-2018-0003

FNS Document

FD-144, SP04 SFSP01 CACFP04-2018

Resource Type

Policy Memos

Guidance Documents

DATE:

Jan. 18, 2018

MEMO CODE:

FD-144, SP04 SFSP01 CACFP04-2018

SUBJECT:

Market Basket Analysis when Procuring Program Goods and Modifying Contracted-For Product Lists

TO:

Regional Directors

Special Nutrition Programs

All Regions

State Directors

Child Nutrition Programs

All States

Market Basket

- **Market Basket** evaluates the lowest price vendor using a **sample** of goods
 - Sample of goods must represent a specific estimate of the total contract value
 - A minimum sample of 75% (80% is better) of the aggregate estimated contract value.
 - Must obtain prices for remaining listed goods (not used in evaluation) prior to final award. The items must be necessary and the prices reasonable.
 - The value of the remaining listed goods is part of the total contract value. If the total value exceeds the Small Purchase threshold, then a rebid as a Formal Purchase is required.



Mfgr Number

Cases

BID

1

JTM CP5813

Pork Patty 1 oz
150 per case
Sausage Patty 1 oz
Equal or
better
Equal or

50

2

Cloverdale 123312

= 80% of the total contract items.

50

3

Foster Farms 95150

The contract will be awarded to the vendor with the lowest price.

50

SKIP A FEW ITEMS

79

JTM HD 5986

50

80

Cloverdale 81649

Turkey patties 1 oz
150 per case
Equal or
better

50

Breakfast Burrito .5

81

Foster Farms

The remaining 20% must be listed, but will not be included in award consideration. The prices must be provided by the vendor and approved before contract signage.

25

SKIP A FEW ITEMS

100

Cloverdale 49755

100 per case
better

25

Written Procurement Procedures

Procurement Plan

- **Market Basket USDA Guidance - Sample language:**

“The Market Basket Analysis sample is established to represent [75] % of the total estimated value of the contract to be awarded. The most recent velocity/sales report from our current supplier(s) was used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, the list of [100] goods to be purchased under the solicitation includes the top [80] goods purchased by dollar volume representing the [80] % threshold. Prices for the remaining [20] goods listed in the solicitation should also be included, though they will not be a part of the market basket analysis.”



Reminders

- Solicitation and contract mirror each other in terms and conditions
- Allows for the addition of goods after final contract award when:
 - Included in the procurement solicitation, and contract documents
 - The total value of all additional goods does not exceed the amount specified in the solicitation and contract documents.
 - Recommend limiting additional costs to no more than 5-10% of the estimated contract value.
- Pre approved substitutes, if allowed in the contract, are not considered additional goods.
- A contract amendment is performed when adding new items.



Maintain Oversight - Monitor the Contract

§ 200.318 - General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal 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 non-Federal 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.



Monitoring the Contract

Preprinted Checklist

Yes or no questions

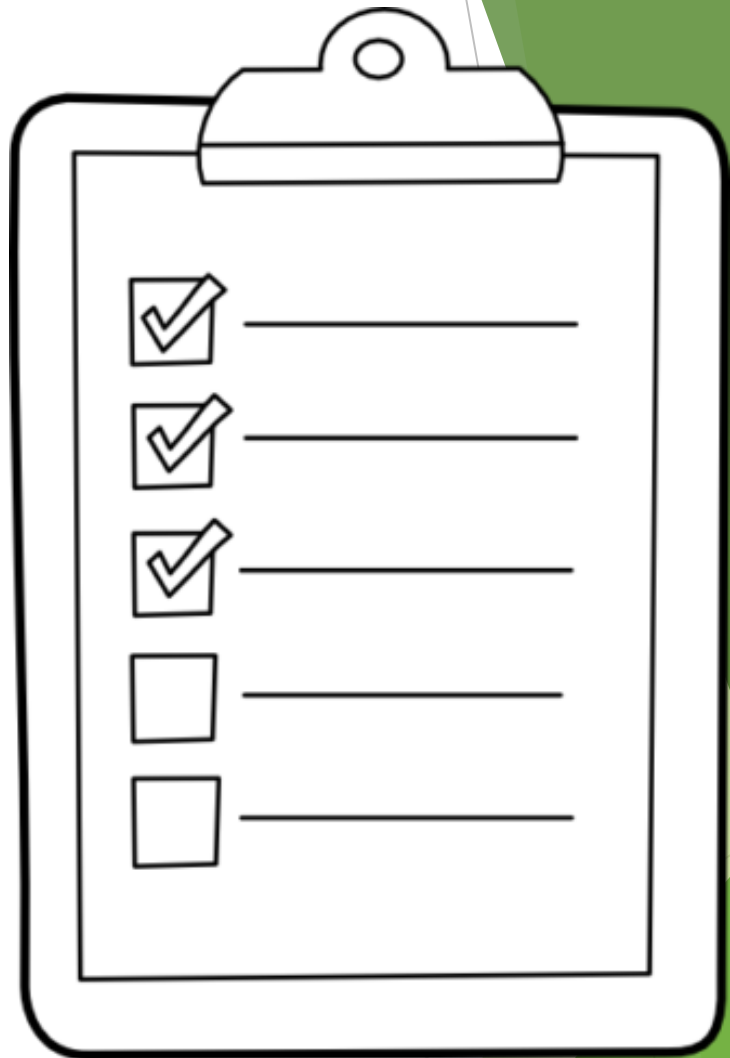
Who

What

When

Where

Comments:



Monitoring the Contract

Objective - Comparisons

Mathematical

Assessments

Price

Fees



Monitoring the Contract

Subjective - Feeling

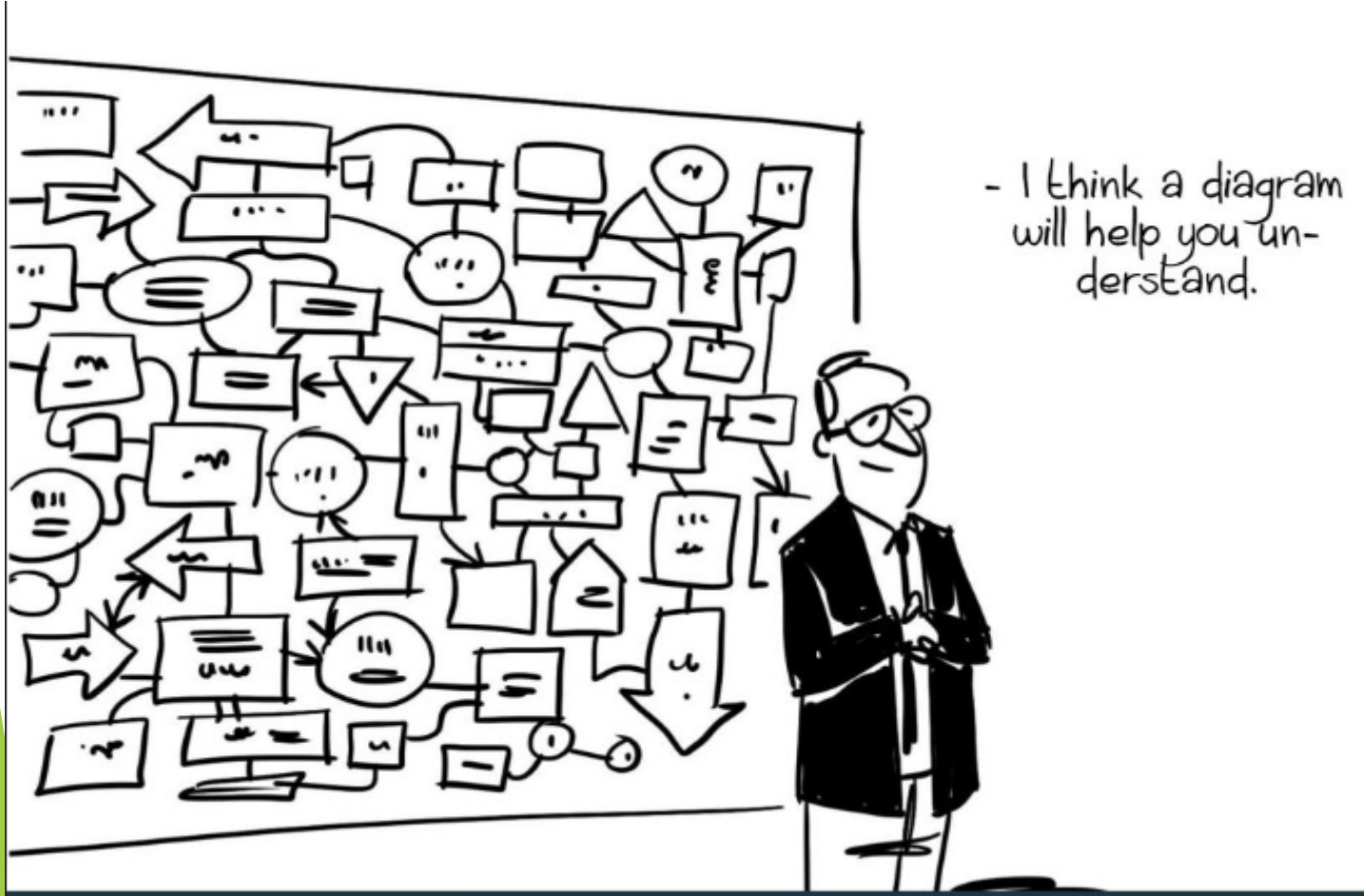
Trust

Reliability

Relationship



???Questions???



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Child Nutrition Procurement: Beyond Procurement Basics January 2023

Training Certificate
60 minutes in
Key Area 2: Operations
2400 Purchasing/Procurement

Key Area 3: Administration
3320 Compliance with Regulations/Policies

Name:

Date: