

Section 7000

Financial Management

Table of Contents

Table of Contents

7100	Financial Management.....	3
7120	Cost Principles.....	3
7121	<i>Allowable Costs.....</i>	3
7122	<i>Brief List of Allowable Cost Items.....</i>	4
7123	<i>Detailed List of Allowable Cost Items.....</i>	4
7124	<i>Unallowable Costs.....</i>	10
7200	Procurement.....	10
7210	Standards of Conduct.....	11
7220	Full and Open Competition.....	11
7230	Written Procurement Procedures.....	12
7231	<i>Forecast and Schedule Purchases.....</i>	12
7232	<i>Selection of the Procurement Method.....</i>	12
7233	<i>Evaluate Proposals and Offers.....</i>	13
7234	<i>Award and Manage the Contract.....</i>	13
7235	<i>Protest Procedures.....</i>	13
7236	<i>Other Provisions that Affect the Bidder.....</i>	13
7300	Procurement Methods.....	13
7301	<i>Simplified Acquisition Threshold.....</i>	14
7302	<i>Purchase Decision Chart.....</i>	14
7310	Informal Procurement Methods.....	15
7311	<i>Micro-Purchase Method.....</i>	15
7312	<i>Small Purchase Method.....</i>	16
7320	Formal Procurement Methods.....	18
7321	<i>Sealed Bid.....</i>	18
7322	<i>Competitive Proposal.....</i>	20
7400	Noncompetitive Method.....	22
7410	Inadequate Competition.....	22
7420	Sole Source.....	23
7430	Public Emergency or Unexpected Emergency Situation.....	24

7440	Submittal to TDA	24
7500	Bonding Requirements	25
7600	Solicitation	25
7700	Contracts	25
7710	Awarding the Contract.....	26
7711	<i>Primary Consideration</i>	<i>26</i>
7720	Contract Negotiation for an RFP.....	26
7730	Contract for an IFB.....	27
7740	Elements of a Contract	27
7741	<i>General Contract Requirements</i>	<i>27</i>
7742	<i>Contract Management</i>	<i>28</i>
7743	<i>Invoicing and Payments</i>	<i>28</i>
7744	<i>Other Requirements.....</i>	<i>28</i>
7745	<i>Products or Services to Be Provided</i>	<i>28</i>
7750	Other Federal Contract Requirements	29
7760	Protest	29
7800	Record Retention.....	30
7810	Procurement Documentation	30
7820	Contract Documentation.....	31
7900	Additional Guidance.....	31
7910	Contracting With Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms	31
7920	Compensation for Purchased Services.....	31
7930	Disputes.....	32

Section 7000

Financial Management

7100 Financial Management

The CE must practice a financial management system that promotes program integrity; establishes internal controls; and provides safeguards that improve the management of the CSFP. Additionally, the CE must create and follow written procedures describing these aspects of the financial management system:

1. Method for determining whether a cost is allowable
2. Process for making payments
3. Procurement procedures
4. Records that clearly report all financial transactions

Financial management practices must include the following:

- Written procedures for determining if costs are allowable in accordance with 2 CFR 200.302 & 2 CFR 200 Subpart E.
- Internal controls that ensure that the CE:
 - Manages, complies, evaluates, and monitors compliance with federal statutes; federal regulations; and TDA rules, policies, and guidance.
 - Takes prompt action to correct noncompliance, including noncompliance identified in audit findings.
 - Protects all information, including personally-identifiable information

7120 Cost Principles

The CE's accounting practices must be consistent with cost principles discussed below to provide for adequate documentation and efficient and effective operation of the CSFP.

7121 Allowable Costs. Allowable costs must be reasonable and allocable.

reasonable – A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the purchase decision was made.

allocable – A cost is allocable to a particular program (or other cost objective) if the goods or services involved are chargeable or assignable to that program (or cost objective) based on the relative benefits received.

7122 Brief List of Allowable Cost Items. The short list below may be helpful for CEs.

Note that this list is not comprehensive.

- Nutrition education services provided to participants and used for training site staff members
- Transporting United States Department of Agriculture (USDA) Foods and administering the food distribution system
- Interpreters and translators for CSFP materials
- Outreach services
- Audits and fair hearings
- General administration, including, but not limited to, personnel, warehousing, and insurance
- Monitoring and reviewing CSFP operations
- Transportation for participants to and from the CE's administrative office or a specific site (when the site has determined and documented the need for such assistance)

7123 Detailed List of Allowable Cost Items. This list is not all inclusive. For more information, contact the Program Specialist.¹

Administrative labor – Administrative labor costs include salaries and benefits for administrative personnel, such as, but not limited to, secretaries and accountants. Each element of an individual's compensation must be reasonable for the services provided by the individual and conform to the organization's written compensation policy. Such costs include the following:

- Salaries or hourly rates for administrative labor. These are reasonable when the rates that are charged are the same as the rates paid for similar work throughout the organization.
- The employer's share of federal, state, and local employment taxes such as, but not limited to, Social Security, withholding tax, and state unemployment taxes. The employer's share of fringe benefit costs such as, but not limited to, vacation leave; military leave; health benefits; life and disability insurance; paid non-work holidays; and retirement benefits.
- Payment of overtime, holiday pay for work performed on a non-work holiday, and compensatory leave. These are allowed with specific prior written approval from TDA for each instance, except for cases of emergencies. The CE must contact the Program Specialist² within two working days of any emergency situation.

¹ Email CommodityOperations@TexasAgriculture.gov or call 1-877-TEX-MEAL (839-6325).

² Email CommodityOperations@TexasAgriculture.gov or call 1-877-TEX-MEAL (839-6325).

- Incentive payment or award given to an employee. Specific prior written approval from TDA is required for costs of an incentive payment or award given to an employee, except for awards of nominal or minimal value. Awards of minimal value include, but are not limited to, length of service pins, certificates of appreciation, floral arrangements, live plants, mugs, and plaques.
- Severance or dismissal pay. This is compensation paid to an employee whose employment is terminated. The cost of severance pay is allowed on a case-by-case basis, with specific prior written approval from TDA.

Accounting – The CE may include the cost of establishing and maintaining accounting and other information systems required for management of the CSFP. However, the CE may not claim the cost of maintaining central accounting records to meet all of the organization's requirements.

Advertising and public relations – Advertising media can include, but is not limited to, magazines; newspapers; radio; television; direct mail; exhibits; and electronic or computer transmittals. CEs may claim the costs of advertising media and resulting administrative costs, such as the following:

- The recruitment of personnel required by the CSFP
- The procurement of goods and services for the performance of the CSFP
- The disposal of scrap or surplus materials acquired in the performance of the CSFP except when the CE is reimbursed for disposal costs at a predetermined amount
- CSFP outreach and other specific purposes necessary to meet the requirements of the CSFP

Public relations – Activities dedicated to 1) maintaining the CE's image or 2) maintaining or promoting understanding and favorable relations with the community or the public. The only allowable public relations costs are given below:

1. Costs specifically required by the CSFP
2. Costs necessary to the outreach effort for the CSFP, including costs of communicating with the public and press about specific activities or accomplishments that result from performance of the CSFP
3. Costs of conducting general, necessary communication and liaison with news media and government public relations officers for the specific purpose of informing the public on matters of public concern (for instance, notices of funding opportunities, financial matters, etc.)

Audits – The CE may claim the cost of audits required for the administration and management of the CSFP.

Communications – Includes the costs of supplies and services such as telephone, telegrams, fax, license fees for electronic mail software, internet services, postage, and messenger services. Costs for communication supplies and services must be prorated accordingly.

Conferences – Meetings and conferences include federal, state, county, national, or regional conferences. (Meetings and conference costs are not the same as training costs.) With prior approval from TDA, the following **administrative costs** are allowed:

- Rental costs of properly procured meeting and conference room space
- Fees for speakers who are not employees, officers, directors, trustees, or immediate family members
- Costs for meals and nonalcoholic beverages served to participants (but not guests) when CSFP training is presented concurrent with the meal service

With prior approval from TDA, the travel and registration fees for attending meetings and conferences devoted solely to the CSFP are allowable costs.

With specific prior written approval from TDA, the prorated share of travel and registration fees when the CSFP is only a portion of a larger related agenda.

When the CE hosts or sponsors the conference, allowable costs include the following:

- Rental of facilities
- Speakers' fees
- Costs of meals and refreshments
- Local transportation
- Other items incidental to such conferences

Equipment – To be classified as equipment, an item must cost at least \$5,000 per unit and have a useful life of at least one year. Instead of using depreciation, an organization, with specific prior written approval from TDA, can charge the CSFP for capital expenditures for special purpose equipment at the time the items are purchased. The CE must keep invoices, bills of sale, purchase orders, leases, contracts, and procurement documents to meet documentation requirements.

Equipment management. Equipment purchased in whole or in part with CSFP funds must be managed according to, at a minimum, the following requirements.

- A description of the equipment
- A serial number or other identification number
- The source of funding for the equipment (including the FAIN³)

³ Available at Squaremeals.org, Programs, Commodity Supplemental Food Program, CSFP CFDA and FAIN Numbers.

- The name of the person that holds the title
- The acquisition date
- The equipment's cost
- If not wholly used for CSFP, the percentage of CSFP funds used to acquire the equipment
- The equipment's location
- The equipment's use
- The equipment's condition
- The ultimate disposition data, if applicable, including the date of disposal and the sale price

Equipment inventory. At least once every two years, the CE must take a physical inventory of the equipment and reconcile the inventory against the equipment records.

Equipment safeguards. The CE must develop a control system to adequately safeguard equipment against loss, damage, or theft. Similarly, the CE must develop adequate maintenance procedures to keep the equipment in good condition. Additionally, the CE must investigate any loss, damage, or theft.

Equipment sales. If the CE is authorized or required to sell the equipment, proper sales procedures must be established to ensure the highest possible return.

Insurance – The CE may include insurance costs that are required for the administration of the CSFP.

Rental costs of real property and equipment – Allowable when considered in light of certain factors and limitations, which include

1. rental costs of comparable property, if any,
2. market conditions in the area,
3. available alternatives, and
4. the type, life expectancy, condition, and value of the property leased.

Limitations include, but are not limited to, leases that involve 1) sale and lease-back and 2) less than arm's length arrangements.

All rental arrangements should be reviewed periodically to determine if circumstances have changed and if other options are available.

Legal – The CE may include legal expenses required for the administration of the CSFP. However, the CE may not claim the cost of maintaining a legal staff with general responsibilities.

Memberships, subscriptions, and professional activity – Membership costs in civic, business, technical, and professional organizations; and subscriptions to professional and technical periodicals are included in this category. Allowable costs include the following:

- Membership fees and annual dues for the CE's membership in business, technical, and professional organizations related to the CSFP
- Membership fees and annual dues for one individual membership per CE in business, technical, and professional organizations related to the CSFP when the organization will accept only individual but not organizational memberships
- Costs for the CE's subscription to periodicals related to the CSFP

Materials and supplies, including computing devices – Costs incurred for materials, supplies, and fabricated parts necessary to run CSFP are allowable.

Materials and supplies that are purchased. These items must be charged at their actual prices, net of applicable credits.

Materials or supplies that are withdrawn from general stores or stockrooms. These items must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

Materials and supplies that are used for the performance of the CSFP. These items may be charged as direct costs. Specifically for computing devices, charging as direct costs is allowable when the devices are essential and allocable to – but are not solely dedicated to – the performance of the CSFP.

Materials federally donated that are used in performing the CSFP. These items will be used without charge.

Space and facilities – Space and facilities costs may be charged through rental fees, lease fees, or depreciation. Whether in privately or publicly owned buildings, the total cost for space and facilities cannot exceed the rental costs of comparable space and facilities for privately owned buildings in the same locality.

Procurement – Procurement service costs include the cost of soliciting bids; preparing and awarding contracts; and all phases of the contract administrative system related to the CSFP.

Publication – Publication, printing, and reproduction include the costs for in-house and outside publication, printing, and reproduction costs. All allowable costs are limited to the direct costs for publication, printing, and reproduction of materials related solely to the CSFP, or to the prorated share when necessary.

Records – Costs for supplies, storage, and maintenance of records necessary for the administration of the CSFP.

Services – Costs of utilities, purchased security, and janitorial service, etc., not already included in space and facilities costs or labor compensation costs.

Taxes – Taxes, or payments in lieu of taxes, that the CE is legally required to pay as a result of operating the CSFP.

Training and education – The cost of training and education provided for CSFP employee development.

Travel – The expenses for transportation, lodging, subsistence, and related items incurred by employees while traveling on the CE's official business for CSFP.

Travel costs may be charged on an actual cost basis; on a per diem or mileage basis in lieu of actual costs incurred; or on a combination of the two. However, the method used 1) must be in accordance with the CE's written travel reimbursement policies and 2) must be applied to an entire trip (not to selected days of the trip). Additionally, the method must result in charges that are consistent with charges typically allowed in similar circumstances in the CE's non-CSFP activities.

Vehicle Expenses. When employees use their own vehicle or a CE's vehicle to conduct CSFP business, the reasonable cost is an allowable administrative cost. Each CE may develop its own travel form containing these elements:

1. The date of each trip
2. The driver's name
3. The mileage
4. The origin and destination of each trip
5. Parking costs
6. The reason for each trip

Lodging and subsistence. As defined above, lodging and subsistence costs are reasonable and allowable only when they do not exceed charges typically allowed by the CE in its regular operations, as described in its written travel policy.

Travel costs charged directly to the CSFP. The CE must maintain documentation to reflect the following:

- The traveler's participation is necessary to the CSFP.
- The costs are reasonable and consistent with the CE's written travel policy.

Commercial air travel. Airfare costs of the basic, least expensive unrestricted accommodations class offered by commercial airlines.

7124 Unallowable Costs. The CE's expenditures that are inapplicable to CSFP objectives are unallowable and include, but are not limited to, the following:

- Administrative costs not approved by TDA
- Bad debts
- Contingencies
- Contributions and donations
- Entertainment
- Fines and penalties
- Fund raising
- Interest and other financial costs, such as insufficient funds/returned check charges as well as late payment fees
- Lobbying to obtain grants, contracts, cooperative agreements, or loans
- Political or partisan costs
- Under-recovery of costs under grant agreements (These are costs exceeding income in other federal programs, including all grant agreements regardless of funding source or program year. Also included are disallowed costs in the current or prior program years.)
- Personal income taxes, corporate income taxes, and taxes resulting from non-CSFP operations

7200 Procurement

These definitions will be used in the discussions below.

procurement – The orderly process of acquiring, by lease or purchase, goods and services such as equipment, bookkeeping, and auditing.

ethics – Moral standards that guide decisions. CEs must use ethical practices in procurement to encourage full and open competition.

full and open competition – Everyone that wants to bid on a procurement has the same opportunity to compete.

Procurement must be conducted in a manner that complies with state and federal procurement requirements. These requirements enable the CE to purchase goods and services at the best available price and to avoid conflicts of interest when purchasing. Costs incurred through improper procurement are unallowable and may result in termination of the CE's participation in the program.

7210 Standards of Conduct

The CE 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 CSFP funds 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 employees, officers, and agents of the CE may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The CE may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value (e.g., cup of coffee). The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the CE.

- If the CE has a parent, affiliate, or subsidiary organization, the CE must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of the relationships with parent company, affiliate, or subsidiary organization, the CE is unable or appears to be unable to be impartial in conducting procurement actions involving a related organization.

7220 Full and Open Competition

Regardless of the dollar amount or the method of procurement used, each CE must ensure full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bid or requests for proposal must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Allowing noncompetitive pricing practices between firms or between affiliated companies
- Allowing noncompetitive contracts with consultants that are on retainer contracts
- Permitting organizational conflicts of interest
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement
- Allowing any arbitrary action in the procurement process

7230 Written Procurement Procedures

CEs must maintain written procurement procedures for the proper procurement of goods and services. Those procedures must include the following elements.

7231 Forecast and Schedule Purchases

CEs plan procurements by evaluating resources, projecting expenses, and determining needs prior to initiating a procurement process by assessing the following:

- Current approach
- Storage capacity
- Equipment
- Resources, such as income, revenue, and staff
- Other operational needs

7232 Selection of the Procurement Method

Generally, the aggregate⁴ amount of the goods or services will determine the necessary procurement method. CEs must have in place any other factors and decision steps that will be used to determine the procurement method to be used for each procurement. Include steps to accomplish the following:

- Develop solicitations
 - The description and scope (specifications) must
 - be in line with the product, or service to be procured,
 - be clearly stated so that bidders will understand and can be responsive to the need, and
 - identify all of the requirements that bidders must fulfill so that changes do not need to be made to a contract after it is awarded.
- Advertise
 - Content must be sufficient enough to identify the following:
 - General nature of the goods or services to be procured
 - Method of procurement to be used
 - Ways a bidder can obtain the solicitation or more information
 - The due date for responses to the solicitation

Methods of advertisement must allow for full and open competition in outlets such as these:

- State, regional, or nation-wide newspapers
- Trade periodicals
- Internet sites
- Direct mailings (small purchase procurement method only)

⁴ *Aggregate* is the total amount of a single invoice for a single purchase of product(s) or service(s). The purchase(s) can occur weekly, monthly, or annually.

7233 Evaluate Proposals and Offers

CEs must determine if bids were received from responsible and responsive bidders.

- “Responsive” means bidder’s products or services meet the specifications.
- “Responsible” means a bidder can and will successfully fulfill the terms and conditions of the proposed procurement. CEs should consider factors such as these:
 - Integrity
 - Compliance with public policy
 - Record of past performance
 - Financial and technical resources

7234 Award and Manage the Contract

CEs management of the contract accomplishes the following:

- Legally ensures commitment
- Provides record of the deal
- Ensures contractor performs in accordance with the terms, conditions, and specifications of the contract by verifying
 - the quantity and quality of the goods and services requested,
 - the timely receipt of the goods and services, and
 - the prices charged for the goods and services are the prices bid and within budget.

7235 Protest Procedures

CEs will specify dispute resolution measures for any action which diminishes full and open competition:

- Supply procedures to all potential bidders
 - Include name and address of person who will handle protests
- Disclose information regarding all protests to TDA

7236 Other Provisions that Affect the Bidder

CEs should include any other factors, in both the solicitation and the resulting contract, that affect the bidder. Such provisions include, but are not limited to, the following situations:

1. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises
2. Emergency situations

7300 Procurement Methods

CEs may choose from two different types of procurement methods: informal and formal. The decision to use informal or formal is based on 1) the total estimated cost of the purchase and 2)

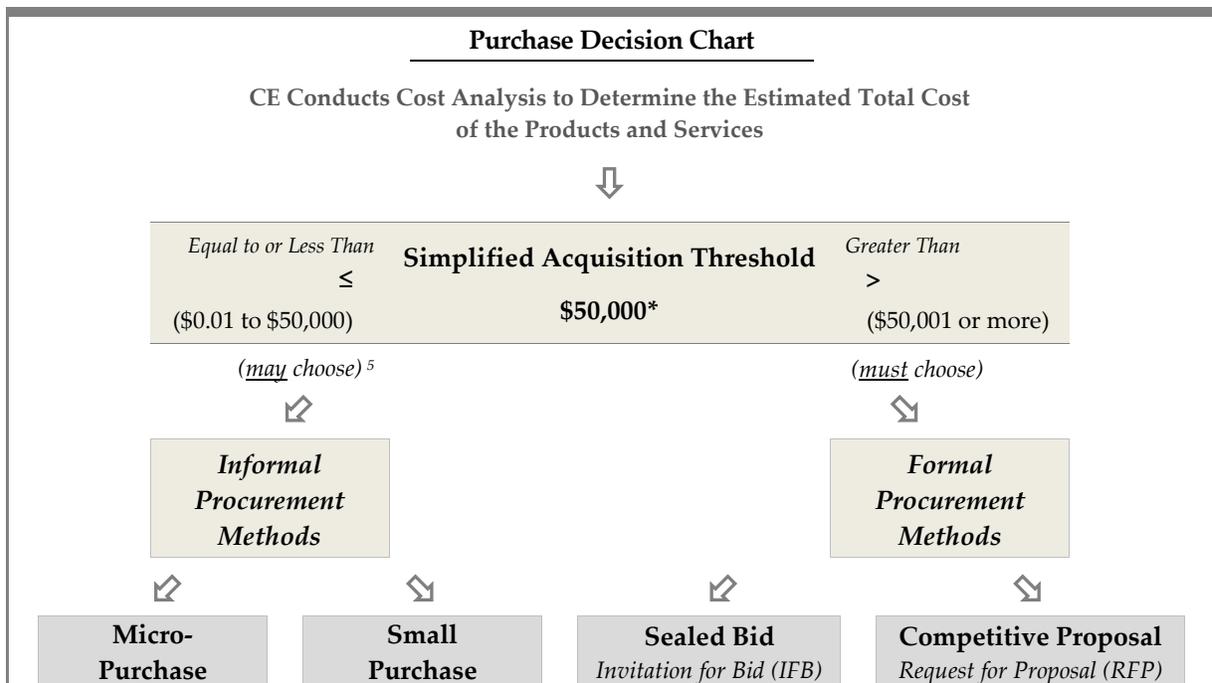
whether the purchase does or does not exceed the simplified acquisition threshold (also known as the small purchase threshold).

In the selection of the procurement method and actions related to the procurement, the CE must follow its written procurement procedure and must retain all records related to the procurement. Any costs incurred as a result of improper procurement processes are unallowable costs.

7301 Simplified Acquisition Threshold. The simplified acquisition threshold, also called *small purchase threshold*, is the highest total cost that can be procured using the informal procurement methods.

- If the purchase is *equal to or less* than the simplified acquisition threshold, the purchase may be made using an informal or formal method.
- If the purchase is *greater than* (exceeds) the simplified acquisition threshold, the purchase must be made using the formal process.

7302 Purchase Decision Chart. The chart below demonstrates the way that the CE makes a decision about which procurement method to use. If a CE has a more restrictive local threshold, that threshold amount should be substituted for the TDA threshold in the chart.



⁵ In order to get a better price, a CE may choose to use a formal procurement procedure for a total cost that is equal to or less than the simplified acquisition threshold.

* Equal to or less than \$50,000 is the TDA simplified acquisition threshold. CEs might be subject to a lower simplified acquisition threshold based on local regulations.

7310 Informal Procurement Methods

When a purchase's total cost is equal to or less than the simplified acquisition threshold, the CE may choose from two informal procurement methods: micro-purchase and small purchase. Both methods are discussed below.

A CE may choose the small purchase method instead of the micro-purchase method if the amount of the purchase is equal to or less than the micro-purchase acquisition threshold.

7311 Micro-Purchase Method

A micro-purchase is a single purchase whose total aggregate cost is equal to or less than \$10,000. This method is intended to minimize the burden for purchases of very small amounts. This method is not, however, intended to circumvent TDA's small purchase threshold of \$50,000. If a CE breaks larger purchases into smaller amounts to qualify as a micro-purchase, then the costs are unallowable. TDA's form *Micro-Purchase Log* is a tool to help CEs capture and retain information for micro-purchases; the use of this form is optional.⁶

CEs must consider the following guidance when making a micro-purchase.

- *Aggregate* — The aggregate total for a micro purchase amount is the total cost for a single invoice for a single purchase or transaction. It is not an accumulation of weekly, monthly, or annual purchases. Rather, it is an individual purchase with an individual invoice.
- *Competitive Purchasing* — Micro-purchases do not require the CE to solicit quotes as long as the price is reasonable.⁷
- *Cost Analysis* — When using the micro-purchase method, a formal cost analysis is not required. However, the CE must have a method to document that the cost of the products and/or services is reasonable — in other words, the CE must conduct a cost comparison. The examples below detail acceptable documentation:
 - Newspaper advertisements from various suppliers
 - Online advertisements from various suppliers

⁶ Obtain the form from Squaremeals.org. Choose Programs, Commodity Supplemental Food Program, CSFP Administration and Forms, then input the form name into the appropriate search field.

⁷ For procurement, *reasonable* is defined as an amount that does not exceed a cost that would be incurred by a prudent person under similar circumstances.

- Documentation of phone quotes from various suppliers, including
 1. Supplier name
 2. Date(s) of contact
 3. Name of person that provides the information
 4. Information provided, such as product and price
- If price is not the determining factor, other documentation that allows TDA to determine that the cost was reasonable:
 1. Maps showing the distance between suppliers, when distance is the factor
 2. Written procedures specifying that micro purchase must be used because space is the factor, such as refrigeration and storage space
- *Equitable Purchasing* — Purchases must be distributed equitably among all qualified suppliers. For instance, the CE cannot make all of its micro-purchases from one qualified supplier. In its written procedures, the CE must include a description of how it will use equitable distribution of micro-purchasing among qualified suppliers.

However, CEs that are located in rural areas may be limited in their ability to distribute purchases equitably, fairly, or equally among a number of qualified suppliers because it is not economically feasible to do so. For example, the cost and time of travel might not be practical. In these cases, the CE must document the reasons why it is not feasible for the CE to distribute purchases among a variety of suppliers. Documentation might include 1) a mileage chart listing the distance to the next closest store or 2) a printout of an online map demonstrating the driving distance.

- *Routine Purchasing* — Routine purchases must not be broken into smaller purchase amounts in order to meet the requirements for a micro-purchase. If the CE is routinely using the micro-purchase method for the same items, the CE must maintain documentation that demonstrates why this is the most suitable method for purchasing these products and/or services and why the use of another procurement method is not possible or reasonable.

7312 Small Purchase Method

A small purchase is a purchase whose total aggregate cost is equal to or less than \$50,000. TDA's form *Small Purchase Log* is a tool to help CEs capture and retain information for small purchases⁸; the use of this form is optional. CEs must consider the following guidance when making a small purchase:

⁸ Obtain the form from Squaremeals.org. Choose Programs, Commodity Supplemental Food Program, CSFP Administration and Forms, then input the form name into the appropriate search field.

- *Aggregate* — The aggregate total for a small purchase is the total cost for a single purchase *or* the total cost for grouped purchases made over an extended period of time (such as a product delivered once a week or twice a month). The total cost for a small purchase contract may be broken into multiple invoices that are paid when specified expectations are met. The aggregate applies to
 - 1) single items (for example, rent); and
 - 2) many items of the same general type of product (for example, office supplies).
- *Competitive Purchasing* — The CE must obtain price quotes from an adequate number of qualified sources (for example, three vendors). The CE must retain documentation demonstrating the price quotes.
 - Quotes may be obtained orally or in writing.
 - Responsive suppliers/vendors provide pricing information specific to the products and services to be purchased.
 - Responsible suppliers/vendors are capable of providing the products and services described in the technical specifications.

When a CE uses the small purchase method, the CE must give the same technical specifications to all suppliers/vendors, and the CE must have and keep documentation showing this.

A CE may choose to issue an invitation for bid (IFB) or request for proposal (RFP) for a small purchase. In that case, the CE should develop a solicitation. For guidance, see “Formal Procurement Methods” in this handbook section.

- *Contract* — If the small purchase solicitation results in a contract, the CE must meet all requirements related to the development and use of a contract described in “Solicitation” and “Contracts” in this handbook section.
- *Cost Analysis* — When using the small purchase method the CE must, at a minimum, conduct a price comparison (as is described in its written procurement procedures). The CE must retain documentation on cost comparisons. The examples below detail acceptable documentation:
 - Newspaper advertisements from various suppliers/vendors
 - Online advertisements from various suppliers/vendors
 - Documentation of phone quotes from various suppliers/vendors, including
 1. Supplier/vendor name
 2. Date(s) of contact
 3. Name of person that provides the information
 4. Information provided, such as product and price

- *Routine Purchasing* — Routine purchases must not be broken into smaller purchase amounts in order to qualify for the small purchase method. If the CE is routinely using the small purchase method for the same items, the CE must maintain documentation that demonstrates 1) why this is the most suitable method for purchasing these products and services and 2) why the use of another procurement method is not possible or reasonable.

NOTE: If the CE routinely uses the small purchase method for the same products or services, formal competitive bids may provide lower costs.
- *Solicitation* — The CE must give all possible suppliers/vendors the same solicitation information, and the CE must maintain documentation showing the solicitation information. In most cases, the documentation shows the technical specifications that the CE gave to supplier/vendors.

7320 Formal Procurement Methods

When a purchase's total cost is more than TDA's simplified acquisition threshold of \$50,000, the CE must use a formal procurement method: either a sealed bid or a competitive proposal. Both methods are discussed below.

7321 Sealed Bid

A sealed bid, also called an invitation for bid (IFB), is a competitive procurement method where bidders submit sealed bids. An IFB is ideal when the CE can accomplish the following:

- Completely and accurately describe the product or service that it wants to purchase
- Locate two or more responsible bidders that are willing to compete for business
- Award a firm, fixed-price contract
- Make an award mainly on the basis of price

An IFB contract is awarded in writing to the most responsible and responsive⁹ bidder whose price is most advantageous to the program.

The CE must follow the steps below when soliciting sealed bids:

1. Publicly announce (for example, in a newspaper) the IFB and allow sufficient response time prior to the date set for the opening of the bids.
2. Solicit bids from an adequate number of known suppliers/vendors.
3. Clearly describe the product(s) or service(s) to be purchased in the IFB.
4. Open the bids publicly at the time and place stated in the IFB.
5. Award the contract to the lowest responsive and responsible bidder that meets the requirements of the IFB.

⁹ Responsible is defined as *able to provide the product or service as described in the solicitation*. Responsive is defined as *a bid or response that addresses the technical specifications expressed in the solicitation*.

NOTE: If specified in the bidding document, consider factors such as discounts, transportation costs and life cycle costs in determining the lowest bid. Payment discounts may be used only if prior experience with the bidder indicates that these discounts are generally taken.

6. Document any and all reasons a bid is rejected.

The following guidance must be used when using the IFB method.

- *Aggregate*—The aggregate amount for an IFB is the total cost for a single contract (or a single renewed contract). The total cost for IFB contracts is typically broken into multiple invoices which are paid when specified expectations are met.
- *Award* — The award for an IFB will be made in writing to the lowest responsible and responsive bidder. A CE may award a contract to a supplier/vendor that is not the lowest bidder if the CE has sound documented business reasons for doing so and this documentation is submitted to, and the contract is approved by TDA prior to the award.¹⁰
- *Competitive Purchasing* — Bids must be solicited from an adequate number of known suppliers/vendors: Two or more responsible¹¹ bidders respond to the solicitation.
- *Contract* — An IFB will result in a firm fixed-price contract award.
- *Cost Analysis* — A formal cost analysis or price comparison, as described in the CEs written procurement procedures, is required.
- *Evaluation of the Bids* — After the sealed bids are opened, the CE must use the rubric or scoring tool that was provided in the solicitation to determine whether a bidder is both responsible and responsive.¹²
- *Opening Sealed Bids* — State and federal regulations mandate that the bids be opened publicly so that bidders and other interested parties may attend. The CE must provide a description of where and when the sealed bids will be opened.

When the technical specifications for the solicitation are complicated, the CE might be unable to quickly determine the most responsible and responsive bid. The CE may choose to announce the responsible and responsive bids at the bid opening; then, at a later date, the CE announces the actual award. In

¹⁰ Submit to CommodityOperations@TexasAgriculture.gov or CE.ProcurementReviews.BOps@TexasAgriculture.gov.

¹¹ Able to provide the product or service as described in the solicitation.

¹² The bid that addresses the technical specifications expressed in the solicitation for product or service.

these cases, the solicitation must clearly describe this process, including the time and place when the contract award will be announced.

- *Public Advertising* — The invitation for bids must be publicly advertised with sufficient response time to allow potential bidders to respond.¹³ The IFB must be publically advertised in such a way as to ensure full and open competition.

For example: Publicizing a solicitation in a regional newspaper might be insufficient notification if the circulation of the paper is limited geographically. Potential bidders often check major newspapers for notification on solicitations but would not check a regional paper.

- *Rejecting a Bid* — Any or all bids may be rejected if there is a sound documented reason. The CE must retain the documentation.
- *Securing Sealed Bids* — As each sealed bid arrives, the bid should be date stamped and stored in a secure place until the time of bid opening.
For example: Locked file cabinet, locked metal box, or any other tamper-proof location.
- *Solicitation* — The CE must provide technical specifications for the product or service to be purchased, the method for submitting a bid, the method and criteria for evaluating the bid, contractual statements required by law, and the method for submitting a protest for the bid award.¹⁴ The CE must maintain documentation that demonstrates the CE's actions to release the IFB to the public as well as all communication that occurs after the bid is released.

NOTE: If the CE answers a question from a bidder, the CE must share this information with all potential bidders. CEs commonly post this information on their websites.

7322 Competitive Proposal

The competitive proposal is also known as a request for proposal (RFP). The CE should use an RFP for purchases of more than \$50,000 when a sealed bid is inappropriate.

For example: A CE wants to purchase accounting services that will cost more than \$50,000 per year. Because several factors are of equal or greater importance than price, an RFP is ideal.

Under the RFP, a contract is awarded to the most responsible and responsive¹⁵ proposal considering price and other factors. With an RFP, each CE must follow these steps:

¹³ See the *Solicitation* subsection in this section for additional information on this topic.

¹⁴ See the *Solicitation* subsection in this section for additional information on this topic.

¹⁵ Responsible is defined as *able to provide the product or service as described in the solicitation*. Responsive is defined as *a bid or response that addresses the technical specifications expressed in the solicitation*.

- Maintain a written procedure for evaluating proposals, for determining with whom the CE will negotiate, and for selecting the successful proposal
- Publicize the RFP
- Identify all evaluation factors and their relative importance in the RFP
- Solicit proposals from an adequate number of qualified sources
- As far as practical, honor all requests to compete
- Award contracts to the most responsive and responsible offeror whose offer is most advantageous to the CSFP
- Promptly notify unsuccessful offerors

The following guidance must be used when using the RFP method.

- *Aggregate* — The aggregate for an RFP is the total cost for a single contract (or a single renewed contract). The total cost for an RFP contract is typically broken into multiple invoices which are paid when specified expectations are met.
- *Award* — An RFP award will be made in writing to the most responsible and responsive proposal.
- *Competitive Purchasing* — Proposals must be solicited from an adequate number of known suppliers/vendors. For there to be competition, there must be two or more responsible and responsive offerors that respond to the solicitation.
- *Contract* — An RFP may be used for a firm fixed-price contract or a cost reimbursable contract.
- *Cost Analysis* — When using the competitive proposal method, a formal cost analysis or price comparison is required as is described in the CE's written procurement procedure.
- *Evaluation of the Proposals* — The CE must use the rubric or scoring tool provided in the solicitation to determine whether a proposal is both responsible and responsive.
- *Public Advertising* — The RFP must be publicly advertised with sufficient response time to allow potential offerors to respond. The RFP must be publically advertised in such a way as to ensure full and open competition.

For example: Publicizing a solicitation in a regional newspaper may not be sufficient notification if the circulation of the paper is limited geographically. Potential bidders often check major newspapers for notification on solicitations but would not check a regional paper.

- *Rejecting a Proposal* — Any or all proposals may be rejected if there is a sound documented reason. The CE must retain the documentation.

- *Solicitation* — The CE must provide technical specifications on the product or service to be purchased, the method for submitting a proposal, the criteria for evaluating the proposal, all contractual statements required by law, and the method for submitting a protest for the bid award.¹⁶ The CE must maintain documentation that demonstrates the CE’s actions to release the RFP to the public as well as all communication that occurs after the proposal is released.

NOTE: If the CE answers individual offeror questions about the solicitation, the CE must have a method to share all answers with all potential offerors. CEs commonly post this information on their websites.

7400 Noncompetitive Method

Procurement by a noncompetitive method is an appropriate method of procurement when one or more of the following circumstances apply:

1. Inadequate Competition
2. Sole Source
3. Public Emergency or Unexpected Emergency Situation

7410 Inadequate Competition

After the CE actively and appropriately attempts to solicit offers from a number of sources, it’s possible that competition is deemed inadequate — that is, too few offers met the solicitation specifications and technical requirements. This could include a CE receiving only one responsible and responsive offer.

For example: A CE is so remotely located that there are a very limited number of qualified sources in the area. In this case, a CE may pursue a noncompetitive procurement if it has 1) ensured that the specifications in the original IFB or RFP are not too restrictive, thereby limiting other potentially qualified bidders, and 2) the proposal has been publicized.

After engaging in competitive purchasing procedures, the CE does **not** need TDA approval¹⁷ to award a noncompetitive bid when there are a limited number of offers, so long as documentation is retained by the CE demonstrating that the CE did not limit competition. Documentation would include, but is not limited to, proof of due diligence in ensuring that competition was not limited, which may include:

- Performing reviews of the solicitation and advertising process
- Surveying suppliers, distributors, or manufacturers to determine why a bid was not submitted
- Copies of the solicitation, advertising, mailing lists, communication documents, contact logs, and other relevant documentation to support the CE’s findings

¹⁶ See the *Solicitation* subsection in this section for additional information on this topic.

¹⁷ However, sole source procurement requires TDA approval. See “Sole Source” for more information.

7420 Sole Source

The product and/or service is available from only a single (sole) source distributor, supplier, or manufacturer. For the sole source method to be used there must be only one possible source for the product and/or service. Sole source noncompetitive procurement requires TDA approval.

TDA must approve all sole source procurement transactions before the award of the contract. To request approval to use a sole source contract, the CE must submit a request to TDA in writing (paper, fax, or email). In its written request, the CE must include the following information:

1. Description of the CE's actions to ensure that the supplier, distributor, or manufacturer is sole source
 - The CE's review may include questioning other vendors of similar products/services to determine if those vendors can meet the precise needs of the CE. If not, the CE must provide written justification to TDA to show why a particular vendor would not qualify as a source.
2. Copies of the CE's solicitation, advertising, and other relevant documentation that demonstrate that the supplier, distributor, or manufacturer is a sole source.

When there is a compelling need to purchase a specific brand product and/or service, such as compatibility with current equipment, the CE must have documentation that demonstrates other available brands are not compatible with the CE's

- current equipment;
- replacement parts inventory; and
- maintenance staff's expertise.

However, even if the CE meets the brand name sole source purchase criteria listed above, the CE must still determine if there are more than one supplier for the brand of equipment or the services. If there are multiple suppliers, the CE must follow normal procurement methods in awarding a contract.

NOTE: In some cases, suppliers for specific brands may be affiliated or associated suppliers, which may result in collaboration among the suppliers and may restrict competition. CEs must address this as appropriate to ensure full and open competition.

TDA will provide written notification of approval or disapproval.

7430 Public Emergency or Unexpected Emergency Situation

A public emergency (exigency) or unexpected emergency situation¹⁸ cannot tolerate the delay that results from the additional time required for a competitive solicitation for the product and/or service. Emergency noncompetitive procurement requires TDA approval.

To request approval to use a noncompetitive method during an emergency, the CE must submit a request to TDA in writing (paper, fax, or email). In cases of extreme emergency a CE may call TDA directly to alert TDA about the situation, raising TDA's awareness of the need for an expedited response. However, the request must still be submitted in writing. In its written request, the CE must include the following information:

1. Explanation of the circumstances that require an emergency purchase
2. Detailed description of the products and/or services to be procured
3. Supplier, distributor, or manufacturer from whom the product and/or services will be procured
4. Period of time the CE plans to use the noncompetitive method for the emergency

TDA will provide written notification of approval or disapproval.

7440 Submittal to TDA

Requests for TDA's review and approval of sole source or emergency procurement processes may be submitted in writing to TDA as follows:

Email to: CE.ProcurementReviews.Bops@TexasAgriculture.gov
Subject: CSFP Noncompetitive Procurement Request (CE name)

Fax to: 888-203-6593
ATTN: Procurement Specialist
Subject: CSFP Noncompetitive Procurement Request (CE name)

Mail to: Texas Department of Agriculture
Food and Nutrition
ATTN: Procurement Specialist
P.O. Box 12847
Austin, Texas 78711

Overnight to: Texas Department of Agriculture

¹⁸ An unexpected emergency situation might include the failure of the refrigeration system causing products on hand to spoil; a supplier cancelling a contracted delivery without adequate notice; or a presidentially declared disaster.

Food and Nutrition
ATTN: Procurement Specialist
1700 North Congress Avenue
Austin, Texas 78701

7500 Bonding Requirements

A bond is required for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold. For all other acquisitions, each CE must evaluate the products or services to be procured and determine if a bond is needed to safeguard any possible loss of funds. If the CE determines a bond is necessary, the bonding requirements may be met through use of a bid bond, certified check, or other negotiable instrument accompanying an offer as assurance that the offeror will, upon acceptance of the proposal or bid, execute such contractual documents as required within the time specified. The CE must describe the bonding requirements in the solicitation and the bonding requirements must be included in the final contract.

7600 Solicitation

A solicitation¹⁹ is prepared by the CE to describe the product or service the CE wants to acquire. The solicitation must clearly define the product or service needed in order for the offerors to properly respond to the solicitation.

NOTE: Although every aspect of the procurement process is important, if the solicitation is poorly prepared, the bids or proposals submitted will match the poor quality of the solicitation.

A solicitation must include the following elements:

- Technical specifications of the service or product to be purchased
- The method for submitting a bid or proposal
- The method and criteria for the CE's evaluation of the bid or proposal
- Legally required contractual statements
- The method to submit a protest

7700 Contracts

A CE must ensure that all contracts are the result of proper procurement procedures. All contracts — regardless of the procurement method — must be awarded to a responsible and responsive contractor whose bid or proposal is the most advantageous to the program.

¹⁹ Micro-purchases do not require a solicitation.

The CE carries the responsibility to ensure that the contract requirements reflect those found in the solicitation and that all of the terms of the contract are being met.

7710 Awarding the Contract

The CE must award the contract to the offeror that is most responsible and responsive to the solicitation based on the most cost effective use of federal funds. CEs must retain documentation demonstrating why the offeror was awarded the contract.

In the evaluation process, the CE must not consider nonresponsive or overly responsive features — the CE can include only responsive features in its evaluation. An over-responsive feature is one that is not requested in the solicitation.

7711 Primary Consideration. No matter the type of contract, cost must be the primary consideration in awarding the contract. In other words, for all contracts, the contract must be awarded to the bid or proposal that meets all of the terms and conditions described in the solicitation with cost as the primary consideration. Primary consideration means giving the cost criteria the greatest weight among all criteria.

For example: A CE has five criteria in the solicitation evaluation. The maximum possible points are given according the following distribution:

<i>Criteria</i>	<i>Possible Points</i>
<u>Cost</u>	<u>35</u>
<i>Financial stability, business practices</i>	5
<i>Reporting systems</i>	10
<i>Product specifications</i>	30
<i>Delivery schedule</i>	20

Cost is given the highest number of points among all of the criteria.

7720 Contract Negotiation for an RFP

When considering responses to an RFP, the CE might find that several vendors are responsive to the solicitation but have very different approaches. In this case, the CE may conduct negotiations with the vendors of the top ranked proposal(s) to ask for clarification about the responsive features. For the purposes of proper procurement, *negotiate* means that the CE may seek clarification or may obtain equivalent elements — not negotiate equal specifications and/or technical requirements. These negotiations are not intended to give one vendor an advantage over another; instead, the negotiations are intended to make sure the CE has a clear understanding of what each vendor is offering.

When negotiating, the CE must not provide additional information other than what was in the original solicitation. Based on the clarification provided by the vendor, the CE may either award the contract or ask for a rebid. Asking for a rebid is often the best action, particularly when the

vendor's clarification demonstrates that the technical specifications in the solicitation were not clear.

For example: The CE may ask each vendor to further explain how it will address one of the technical specifications or to further describe a product included in the proposal. The CE must not say, "Contractor A is also offering to provide this special product: Can you?"

After all vendors have provided clarification, the CE may also ask all or the top vendors to resubmit a best price.²⁰ If the CE chooses to make this request, the CE cannot change the technical specifications provided in the solicitation, nor can the CE change its rubric or scoring tool used for evaluating proposals. The vendor is also not required to change its proposal. Although the request for the best price allows the CE the possibility of obtaining a more competitive price, the request is never intended to be a give-and-take negotiation.

At the end of the negotiation, the CE will award the contract to the proposal from the most responsible and responsive vendor.

7730 Contract for an IFB

For an IFB to be awarded a contract, the following conditions must be met.

- Two or more responsible bidders are willing and able to compete effectively for the business.
- When specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
- If the IFB required a separate presentation of a bid bond, coversheet, or attachment for the bidders to use to demonstrate compliance with the invitation for bid responsiveness criteria, these documents may be pre-screened to determine if the bid is responsive.
- All bids must be publicly opened at the time and place prescribed in the IFB solicitation.
- A firm, fixed-price contract will be awarded in writing to the lowest responsible and responsive bidder.
- Any or all bids may be rejected if there is a sound, documented reason. CEs must retain the document.

7740 Elements of a Contract

The following elements, at a minimum, should be included in a contract.

7741 General Contract Requirements

- Contract duration

²⁰ When a bidder submits a *best price*, the response may be a lower price or the same price.

- Identification of the parties in the contract
- Required compliance certifications
- Type of contract (for instance, fixed-price)

7742 Contract Management

- Contracts for more than \$50,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- Contracts in excess of \$10,000 must address termination for cause and for convenience and include the manner by which it will be effected and the basis for settlement.
- Contract renewal options, including terms, conditions, and (as applicable) provisions for price changes.
- Contractor recordkeeping requirements.
- Procedures for contract modification.

7743 Invoicing and Payments

- Method to ensure that an adjustment or escalation clause is applied both upward and downward in alignment with the index at the frequency as described in the solicitation.
- Procedure for issuing payments, including sufficient information included on invoices to determine if costs are allowable.
- Ownership of any equipment or software purchased by the contractor on the CE's behalf or for the contract.
- Procedures for contract modification.
- Sanctions for noncompliance.

7744 Other Requirements

- Laws and regulations including, but not limited to, the following: local preference; small and minority firms; women's business enterprise; labor surplus area firms; and health and safety.

7745 Products or Services to Be Provided

- Product technical specifications
- Professional certification requirements or minimum levels for required experience or education

- Sanitation and licensing requirements
- Scope of work (such as a detailed description of duties to be performed; hours of work, if applicable; performance descriptions; levels of performance; and required outcomes)

7750 Other Federal Contract Requirements

CEs must adhere to requirements from the following legislative acts:

Clean Air and Water Act and Federal Water Pollution Control Act

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1368), as amended for contracts exceeding \$150,000²¹

Equal Employment Opportunity

41 CFR, Chapter 60. Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for construction contracts using federal funds

Copeland Anti-Kickback Act

For construction or repair (40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3)

Davis-Bacon Act

40 U.S.C. 3141-3148 as supplemented by Department of Labor regulations (29 CFR Part 5) for construction contracts in excess of \$2000

Contract Work Hours and Safety Standards Act

40 U.S.C. 3701-3708. Where applicable, all contracts awarded by the CE in excess of \$100,000 that involve the employment of mechanics and laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5)

Rights to Inventions Made Under a Contract or Agreement

Pertaining to patent rights, copyright and rights in data

Small and Minority Businesses, Women’s Business Enterprise, and Labor Surplus Area Firms

Necessary affirmative steps to procure from minority firms, women’s business enterprises, and labor surplus area firms whenever possible²²

7760 Protest

An interested party²³ may protest any of the following situations:

²¹ See the *Solicitation* subsection in this section for additional information on this topic.

²² See the *Solicitation* subsection in this section for additional information on this topic.

²³ An *interested party* is defined as *any entity or person who may be affected by a situation, or any entity or person who has a real or direct interest in action being proposed or taken.*

- Solicitation or other request for offers for a contract for the procurement of property or services
- Cancellation of such a solicitation or other request
- Award or proposed award of a contract
- Termination of a contract, if the protest alleges that the termination was based on improprieties in the management of the contract.

CEs must have procedures in place to address and resolve protests or disputes relating to procurements. Further, CEs must, in all instances, disclose information regarding any protest or dispute to TDA and USDA.

7800 Record Retention

CEs must keep records for three years. Actions such as bid protest, litigation, and audits may require that records be kept longer. In such cases, CEs must retain the records until the completion of the action and resolution of all issues arising from it. Records must be accessible to USDA or TDA reviewers.

7810 Procurement Documentation

CEs must retain procurement documents for each product or service procured. A list of documents is below.

- A written rationale for the method of procurement
- A copy of the IFB or RFP
- The selection of contract type
- The bidding and negotiation history
- The basis for contractor selection
- Approval from TDA for noncompetitive proposals
- The basis for award cost or price
- The terms and conditions of the contract
- Any changes to the contract
- Billing and payment records
- A history of any contractor claims
- A history of any contractor breaches

Procurement records generated during the performance of the contract award must demonstrate compliance with procurement requirements. If such records fail to demonstrate compliance, the following penalties may occur:

- Disallowance of costs
- Termination of contract
- Other actions TDA deems appropriate

7820 Contract Documentation

Contract documentation must be retained for three years. When a contract is continued or renewed annually, the three-year record retention period begins when the final contract renewal period has expired or when the final payment is recorded, whichever occurs first. In other words, the retention period does not begin on the contract execution date.

7900 Additional Guidance

7910 Contracting With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

CEs are encouraged, whenever possible, to attempt to procure goods and services from small and minority businesses, women's business enterprises, and labor surplus area firms.

CEs must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible. Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
- Using the services of the
 - Small Business Administration
 - Minority Business Development Agency of the Department of Commerce
- Procuring services from labor surplus area firms whenever possible
- Requiring the prime contractor, if subcontracts are to be let, to take these affirmative steps when subcontracting

7920 Compensation for Purchased Services

If a CE agrees or contracts with a consultant or contractor for the purchase of a service, the CE will compensate the consultant or contractor for that service based on the provisions of the contract or agreement. When a contract or agreement identifies a fee or compensation that is based on a set percentage, the contractor or consultant cannot require additional fees from the CE.

For example: A contractor or consultant cannot charge sales tax on services in addition to a set percentage that is assessed for that service as stated in the contract or agreement. If a contractor or consultant charges sales tax on the service provided, they must extract the tax from the compensation (that is, set percentage) that is stated in the contract or agreement.

7930 Disputes

It is the CE's responsibility to obtain legal counsel for the resolution of any disputes arising from participation in a third-party arrangement outside of the *Agreement Between Contracting Entity and Texas Department of Agriculture* (Form H1502).