

# Section 7

# Financial Management

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## Section 7

# Financial Management

A contracting entity (CE) must maintain a financial management system that provides accurate, current, and complete disclosure of the financial status of the CE's operation of The Emergency Food Assistance Program (TEFAP). This system must ensure, but is not limited to, the following:

- Accounting records are supported by source documentation, including canceled checks, paid bills, payroll, and contract and subcontract award documents.
- Records identify the source and application of funds and contain information about TEFAP reimbursement claimed and paid by the Texas Department of Agriculture (TDA), authorization, obligations, unobligated balances, assets, liabilities, outlays, and income.
- Records include accurate, current, and complete reports concerning TEFAP participation and the financial results of the TEFAP.
- Audits are completed yearly to determine, at a minimum, the fiscal integrity of financial transactions and reports, and compliance with laws, regulations, and TDA guidelines.
- A systematic method is maintained to resolve audit and review findings and recommendations.

## Financial Controls

A CE must comply with all applicable financial management requirements in the

- Code of Federal Regulations (CFR) at 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*;
- 7 CFR Part 251, *The Emergency Food Assistance Program* (TEFAP); and
- Texas Department of Agriculture (TDA) policies.

A CE must provide for:

- Identification, in its accounts, of the federal awards received and expended, and the federal programs under which they were received. Federal program and federal award identification must include (2 CFR §200.302(b)(1)):
  - The Catalog of Federal Domestic Assistance (CFDA) title and number. For example, TEFAP #10.569;
  - Federal Award Identification Number (FAIN) and year;
  - Name of the federal agency<sup>1</sup>; and

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<sup>1</sup> The U.S. Department of Agriculture (USDA) is the federal agency for TEFAP.

- Name of the pass-through entity<sup>2</sup>, if any.
- Accurate, current, and complete disclosure of the financial result of each federal award or program (2 CFR §200.302(b)(2)).
  - Up-to-date correct information supported by documentation
  - Accounts for all elements of the program
  - Complies with generally accepted accounting principles (GAAP)
- Records that adequately identify the source and applications of funds for federally funded activities. The records must contain information about the Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income, and interest and be supported by source documentation (2 CFR § 200.302(b)(3)).
  - Source documentation includes, but is not limited to, canceled checks, paid bills, payroll, purchase orders, and contract and subcontract award documents.
- Effective control over, and accountability for, all funds, property, and other assets. The CE must adequately safeguard all assets and assure that they are used solely for authorized purposes (2 CFR §§ 200.302(b)(4) and 303).
- Comparison of expenditures with budget amounts for each federal award (2 CFR § 200.302(b)(5)).
- Written procedures for determining if costs are allowable per 2 CFR Part 200, Subpart E (2 CFR § 200.302(b)(7)).
- Internal controls that ensure the CE (2 CFR § 200.303):
  - Manages TEFAP in compliance with federal statutes, federal regulations, TDA rules, policies, and guidance.
  - Complies with federal statutes, federal regulations, TDA rules, policies, and guidance.
  - Evaluates and monitors its compliance with federal statutes, federal regulations, TDA rules, policies, and guidance.
  - Takes prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings.
  - Safeguards to protect personally identifiable and other information.

These internal controls should comply with the guidance in “[Standards for Internal Control in the Federal Government](#)” (the “Green Book”) issued by the Comptroller General of the United States<sup>3</sup> or the “[Internal Control Integrated Framework](#)” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).<sup>4</sup>

Federal awards include, but are not limited to, reimbursement for participation in any of the child nutrition and food distribution programs administered by TDA.

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<sup>2</sup> TDA is the pass-through entity for TEFAP.

<sup>3</sup> Website: <https://www.gao.gov/products/GAO-14-704G>

<sup>4</sup> Website: <https://www.coso.org/Pages/ic.aspx>

# Conflicts of Interest and Ethical Standards

Organizations participating in TEFAP are required to disclose and identify any conflicts of interest and potential conflicts of interest, including related party transactions; less-than-arm's-length transactions; and an ownership interest in equipment, supplies, vehicles, and facilities. Additionally, participants must disclose any other information that inhibits TDA from making an informed assessment of whether a particular cost is allowable.

Related parties include, but are not limited to, the following relationships:

- Brothers/sisters
- Spouse
- Parents/grandparents
- Children/grandchildren
- Half-brothers/sisters
- Domestic partners and parents thereof
- Any individual related by blood or affinity whose close association is the equivalent of a family relationship
- Affiliates of the organization
- Principal owners of the organization and immediate members of their families
- Management of the organization and immediate members of their families

A **less-than-arm's-length transaction** is one that is not between independent, unrelated, well-informed parties acting independently in their own interests. In a **related party transaction**, one party to the transaction may control or substantially influence the actions of the other(s). Such transactions include, but are not limited to, those between divisions of an organization; organizations under common control through common officers, directors or members; and an organization and a director, trustee, officer, a key employee of the organization or immediate family, either directly or through corporations, trusts, or similar arrangements in which a controlling interest is held, or one in which one party stands to benefit more than the other from the transaction. All related-party transactions are less-than-arm's-length transactions.

A CE cannot allow a conflict of interest or potential conflicts of interest when procuring goods and services and must have written policies and procedures against conflicts of interest. No officer, agent, consultant, contractor, volunteer, or other employee of a CE may engage in any activity which causes or could cause the appearance of a conflict of interest in the operation of TEFAP, including, but not limited to:

- Renting or leasing from a firm in which any officer, agent, consultant, or employee (or relative) has an interest, and this related party transaction has not been fully disclosed.
- Soliciting or accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, sites, or parties to subcontracts.

- Soliciting donations or fees from the participating subagencies or sites.
- Asking subagencies to engage in any kind of business on the CE's behalf.

CEs must disclose annually any conflicts of interest or potential conflicts of interest, including related party transactions, less-than-arm's-length transactions, and any ownership interest in equipment, supplies, vehicles, and facilities when it submits its budget to TDA as part of its application packet for participation in TEFAP. At a minimum, the following information must be submitted to TDA:

- Budget item(s) impacted
- Amount of the contract or cost for the item(s)
- Relationship or ownership interest to the CE
- Any other information that inhibits TDA from making an informed assessment of whether a particular cost is allowable

**NOTE:** Rental costs under "less-than-arm's-length" leases must meet the requirements in 2 CFR §200.465. For TDA to determine the allowability of a less-than-arm's-length lease, expenses such as depreciation, maintenance, taxes, and insurance may need to be included in the disclosure for TDA to make an informed assessment of whether the rental cost is allowable.

Information regarding conflicts of interest or potential conflicts of interest may be submitted in writing to TDA via email at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include "TEFAP Conflict of Interest Disclosure" and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

This disclosure must be made in each program year's budget or each time before the cost is incurred. The disclosure must be made although it was previously disclosed to TDA. Conflict of Interest Disclosures require prior approval from TDA each year or before each occurrence of a transaction. When the conflict of interest or potential conflict of interest is properly disclosed, approval of the budget by TDA meets the requirement for prior approval, unless TDA specifically disallows the cost in writing.

## Written Code of Standards – Ethical Conduct

Per 2 CFR §§ 200.318 and 400.2, a CE must establish and maintain a written code of standards of conduct that govern the performance of its officers, employees, or agents who participate in the selection, award, and administration of contracts. The written code will prohibit conflicts of interest and potential conflicts of interest. This written code must:

- Prohibit owners, members, officers, or employees from soliciting gifts, travel packages, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- Prohibit owners, members, officers, or employees from accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

- Prohibit an owner, member, officer, or employee from participating in the selection, award, and administration of any contract in which the owner, member, officer, or employee is related to a party of the contract or has a financial interest in the entity which is a party to the contract.
- Set standards when financial interest is not substantial, or the gift is an unsolicited item of nominal value, and therefore may be acceptable.
- Provide for the disclosure and prior written approval by TDA for all less-than-arm's-length transactions.
- Provide for penalties, sanctions, or other disciplinary actions to be applied for violations of the standards.

For CEs having a parent, affiliate, or subsidiary organization that is not a state or local government, 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 a parent company, affiliate, or subsidiary organization, the CE is unable or appears to cannot be impartial in conducting a procurement action involving a related organization.

## Procurement

### Overview

Procurement is the orderly process of acquiring, by lease or purchase, goods and services such as facilities, equipment, bookkeeping, and auditing. TEFAP CEs must comply with state and federal procurement requirements. These requirements enable CEs to purchase goods and services at the best available price and avoid conflicts of interest when making purchases.

Procurements must be conducted in a manner that allows for full and open competition, meaning that everyone is on a *“level playing field”* and has the same opportunity to compete.

Procurement ensures:

- Vendor participation
- Competitive cost of goods and services
- Quality goods and services

Improper procurements may lead to disallowed costs, withholding or recovery of reimbursements, corrective action, or termination from future TEFAP participation.

### The Procurement Process: A Multi-step Approach

A CE must follow the procurement process to ensure that all procurement requirements are met. As the process may take many months to complete, advanced planning and execution are strongly recommended. CEs are required to develop written procurement procedures. A CE's written procurement procedures will address how the CE will accomplish each step of the procurement process.

An overview of the procurement process is:

1. **Writing** procurement procedures
2. **Forecasting** quantities needed/**Scheduling** when quantities are needed
3. **Selecting** the proper procurement method
4. **Developing** a solicitation
5. **Advertising** the solicitation
6. **Evaluating** proposals and offers
7. **Awarding** the contract
8. **Managing** the contract

<b>Procurement Procedures: Why a CE Must Have Them</b>
<ul style="list-style-type: none"><li>• Required by federal regulations (2 CFR § 200.319(d))</li><li>• Ensure full and open competition</li><li>• Help identify potential suppliers for goods and/or services procured using the corresponding procurement method</li><li>• Help the CE to determine which procurement method(s) will be used</li><li>• Identify parties that will address issues raised throughout the procurement process</li><li>• Prohibit conflicts of interest</li><li>• Ensure ethical standards with a written code of conduct</li></ul>

## Written Procurement Procedures

A CE must use its own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal law (2 CFR §§ 200.318 and 200.319(d)).

Maintaining and following written procurement procedures ensures that a CE will conduct all purchases

- Efficiently and effectively;
- In compliance with federal, state, and local regulations; and
- While preventing fraud, waste, and abuse.

Written procurement procedures must include the position(s) which are responsible for carrying out each step, as well as the timing the actions will take place. The procedures must provide that proposed procurement actions will be reviewed by the CE's officials to avoid the purchase of unnecessary or duplicative items, and where appropriate an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. (2 CFR § 200.318(d)).

The procedures must encompass each procurement method discussed in this handbook. The level of detail should reflect CE operations.

At a minimum, a CE's written procedures must address the following elements of the procurement process:

### Forecasting and Scheduling

CEs plan procurements by evaluating resources, projecting expenses, and determining needs before initiating a procurement process by assessing:

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

### Selecting a Proper Procurement Method

The aggregate amount<sup>5</sup> of the goods or services will determine the procurement method to be used; however, a CE may consider other factors as well.<sup>6</sup> A CE should consider:

- Any factors, other than the aggregate amount of the procured goods and services, which will determine the procurement method to be used
- How to avoid the acquisition of unnecessary or duplicative items (2 CFR § 200.318(d))
  - How to obtain a more economical purchase, considering the consolidation or breaking out of procurements (2 CFR § 200.318(d))

**NOTE:** A CE may not break up a procurement that exceeds the small purchase threshold for the sole purpose of avoiding following formal procurement procedures. This would violate federal requirements and may result in unallowable costs and/or findings.

- Cost Analysis/Equitable Distribution—How the CE will perform a cost analysis with every procurement action above the small purchase threshold, including contract modifications.
  - While a formal cost analysis is not required for micro-purchases, a CE must document how such purchases will be rotated **among qualified suppliers** and equitably distribute purchases.
  - Small purchase procedures also do not require a formal cost analysis; however, CEs must still obtain **at least three price quotes** from an adequate number of qualified sources.

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<sup>5</sup> *Aggregate amount* – The total amount of a single invoice for a single purchase of product(s) or service(s).

<sup>6</sup> See “Procurement Methods” in this handbook section for more information.

## Solicitation Development

When developing specifications, requirements, invitations for bids, or requests for proposals, CEs must consider:

- Type of contract
- Contract duration
- Goods and services specifications must correspond with items and/or services being procured; specifications may include product name, variety, grade, size, quantity, cleanliness, packaging, delivery, and other product/service requirements.
- Full and open competition is maintained when using all procurement methods.
- CEs may *not* create specifications which would eliminate or unduly restrict full and open competition, which would include, but are not limited to, the following situations (2 CFR § 200.319 (a)):
  - Specifying a brand name product instead of allowing an equal product to be offered
  - Product specifications which are too detailed, restricting competition
  - Placing unreasonable requirements on bidders
  - Requiring unnecessary experience and/or excessive bonding
  - Noncompetitive pricing practices between firms or between affiliated companies
  - Noncompetitive contracts to consultants/contractors that are on retainer contracts with the CE already
  - Organizational conflicts of interest
  - Any arbitrary action in the procurement process
- Solicitations must be clearly stated so bidders can fully understand the need for goods and services (2 CFR § 200.319(d)(1))
- Solicitations must clearly outline requirements the bidder must fulfill to be responsive (2 CFR § 200.319(d)(2))
- Renewal options
- Modification and change procedures, considering:
  - Communication of changes to the contractor regarding initially estimated needs and actual needs
- Default and breach provisions, remedies, and penalties
  - This includes how the CE will handle protests and disputes.
  - Supply copies of dispute resolution procedures to all potential bidders that include the name and address of the person who will decide whether the protest should be sustained.
  - Disclose information regarding all protests to TDA.

- CEs must ensure contractors do not develop any specifications, requirements, statements of work, Invitation for Bids (IFBs), Request for Proposals (RFPs), contract terms and conditions, or any other procurement documents. CEs must draft their own specifications and procurement documents.
  - If a CE allows a contractor to create any procurement documents, a CE must indicate in its procedures how that contractor will not compete for the contract or award.
  - If a CE chooses to use a contractor's information or assistance in developing procurement documents and the contractor is then allowed to compete for the award, the CE must not use any TEFAP funds for the resulting award.
- Local or geographic preference (if applicable and allowed)
  - A CE must include a definition(s) of "local" in its written policies and procedures if applying a geographic preference. However, this definition of "local" may not restrict full and open competition.
- Evaluation and scoring factors, with cost as the primary factor.

**NOTE:** CEs must draft their own specification and procurement documents. Any CE that copies a list of features or evaluation and ranking criteria drafted by a potential contractor and then permits that potential contractor to submit a bid has violated federal and state procurement regulations.

### Advertising/Publicizing the Bid

A CE must advertise competitive bids and must publicize competitive proposals (e.g., through advertisements) (2 CFR § 200.320). CEs should consider:

- Due dates —Time needed for pre-bid and award meetings, etc.
- Advertisements must provide sufficient information for potential bidders such as:
  - The general nature of the goods or services to be procured
  - Method of procurement that will be used
  - Ways the bidder can obtain the solicitation or more information
  - The due date for solicitation response
- Methods of advertisement to allow for full and open competition. This will vary from city to city, and a CE must be able to document how the method of advertisement will ensure circulation of the bid/proposal to the general public for the type of goods/services which are being acquired, as well as ensure that the CE is receiving an adequate number of bidders. Methods may include:
  - State, regional, or nation-wide newspapers
  - Trade periodicals
  - Designated internet sites
  - Direct mailing (for small purchase procurement method only)

- Other print media that serves the business community and the general public
- CEs must take all necessary affirmative steps to ensure that minority businesses, women’s business enterprises, and labor surplus area firms are utilized when possible. (2 CFR 200.321).
- Include 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 resources.
- When economically feasible, divide total requirements into smaller tasks or quantities to permit maximum small and minority business and women’s business enterprises participation.
- Where the requirement permits, establish delivery schedules which will encourage the participation of small and minority businesses and women’s business enterprises.
- Use the services of the Small Business Administration and the Minority Business Enterprise of the Department of Commerce.
- If subcontracts are to be let, require the prime contractor to take the affirmative steps above.

## Evaluating responses

The CE must ensure that the solicitation is awarded to a responsive and responsible vendor. CEs must consider the following:

- **Responsive** means the contractor’s goods or services meet all the CE’s specifications as outlined in the solicitation.
- **Responsible** means a contractor can successfully fulfill the terms and conditions of the proposed procurement (2 CFR § 200.318(h)). A CE should determine whether a contractor is responsible by investigating the contractor’s:
  - Integrity
  - Compliance with public policy
  - Record of past performance
  - Financial and technical resources
- Pre-qualified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure full and open competition (2 CFR § 200.319(e)).
  - Potential responsive and responsible bidders not included in these pre-qualified lists cannot be excluded from bidding
  - **NOTE:** While pre-qualified lists may not be common for TEFAP CEs to have and use, if a TEFAP CE has a list of pre-qualified bidders, they must follow this requirement to allow for full and open competition.
- Contractors that are determined not to be responsible are ineligible for contract award.

- The CE must document this decision and supporting reasons as to why the contractor(s) was not responsible.
- The cost must be used as the primary factor.
- Bids must be evaluated without consideration of any included unallowable cost provisions.
- Any and all bids may be rejected if there is a sound documented reason.

### **Ethical Conduct**

A CE cannot allow a conflict of interest or potential conflicts of interest when procuring goods and services. See “Conflicts of Interest and Ethical Standards” in this section for more information.

**NOTE:** In the absence of a written code of standards, or when TDA determines that a violation of the code has occurred, TDA will issue a finding and require corrective action.

### **Awarding and Managing the Contract**

The CE must award and effectively manage the contract (2 CFR § 200.318(h)). A CE must consider the following:

- The contract must be awarded to the responsive and responsible bidder possessing the ability to perform successfully under the terms and conditions of the proposed procurement.
- The contract is a
  - formal, legally enforceable agreement
  - record of the procurement transaction
  - dispute resolution mechanism
- The CE must monitor the contractor performance to ensure the following:
  - Performs per the terms, conditions, and specifications of the contract
  - Receives quantity and quality of the goods and services requested
  - Receives the goods and services on time
  - Is charged the correct prices as bid and within budget
- The CE is responsible for settling any contractual and administrative issues which may arise after an award. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. (2 CFR § 200.318(k)).
  - The CE must specify dispute resolution measures for any action that diminishes full and open competition. Procedures must be provided to all potential bidders including the name and address of the person who will handle protests. The CE must disclose information regarding all protests to TDA.

**REMINDER:** CEs are responsible for maintaining up-to-date procedures and training staff on these procedures before the start of TEFAP operations, and as needed throughout the program

year (e.g., when there is a change to a procedure). Procedures are subject to review by TDA. TDA may issue a finding(s) and/or require corrective action(s) if a CE's procedures do not comply with TEFAP regulations and/or if a CE is not following its own procedures.

## Procurement Methods

CEs must use the appropriate procurement method depending on the cost of the good(s) or service(s) they need to procure. The procurement methods a CE must use when procuring (e.g., purchasing) goods and services are discussed and include (2 CFR § 200.320):

- Informal Procurement Methods
  - Micro-purchase
  - Small Purchase
- Formal Procurement Methods
  - Competitive sealed bids (Invitation for Bid (IFB))
  - Competitive proposals (Request for Proposal (RFP))

Whenever a CE is purchasing goods or services using federal funds in support of the TEFAP program, the appropriate procurement method must be followed.

## Simplified Acquisition Threshold

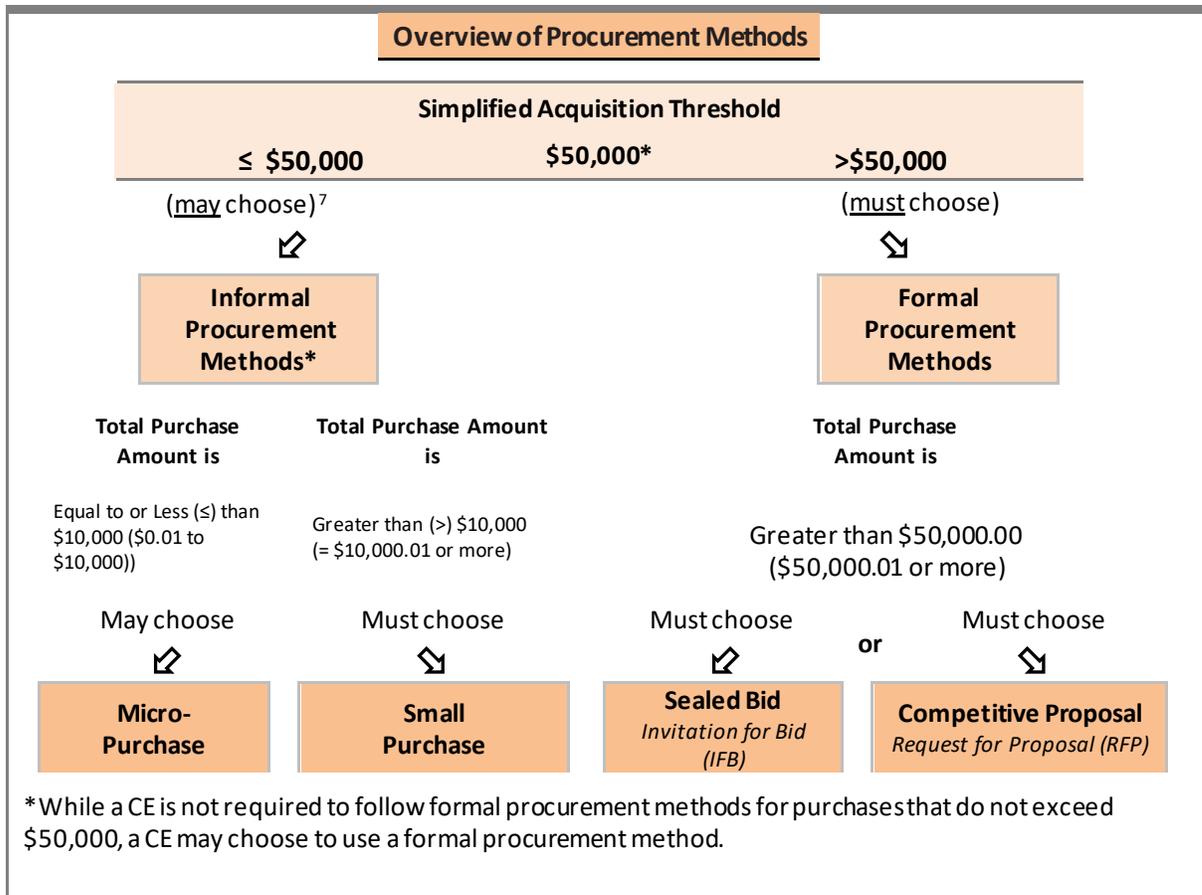
The simplified acquisition threshold, also called the *small purchase threshold*, is the highest total cost that can be procured using the informal procurement methods.

- 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.

The aggregate amount of the goods/services will determine which procurement method will be used. While the federal simplified acquisition purchase threshold is set at \$250,000, TDA has set a more restrictive threshold of \$50,000.

## Overview of Procurement Methods

Except for the noncompetitive proposal, the chart below summarizes the types of procurement methods a CE must use when conducting the procurement of goods and services.



### Informal Procurement Method: Micro-purchase

A micro-purchase is the acquisition or purchase of goods and/or services that have an aggregate cost that does not exceed \$10,000. The \$10,000 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.

A formal cost analysis is not required when a CE uses the micro-purchase method. However, the CE must have a method to document that the cost of the good and/or service is reasonable.<sup>8</sup> Acceptable documentation includes, but is not limited to:

- Newspaper advertisements from various suppliers/vendors
- Online advertisements from various suppliers/vendors
- Documentation of phone quotes from various suppliers to include the following:

<sup>7</sup> CE may choose to use a formal procurement procedure for a total cost that is equal to or less than the simplified acquisition threshold to get a better price.

<sup>8</sup> 2 CFR § 200.404 states, "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 decision was made to incur the cost."

- Supplier/vendor name
- Name of the person providing information
- Date(s) of contact
- Information provided, including product and pricing
- Other documentation that allows TDA to determine the cost was reasonable if the price was not the determining factor, such as:
  - Maps showing the distance between vendors when the distance is the factor
  - Procedures that specify micro-purchase must be used because space is a factor, such as refrigeration/storage space

Purchases must be distributed equitably among all suppliers. The CE cannot make all its micro-purchases from one supplier and must, when feasible, “share the wealth” among suppliers. However, CEs located in rural areas may be limited in their ability to distribute purchases equitably among several merchants or suppliers because it is not economically feasible to do so, i.e., cost and time of travel. In these cases, the CE must document the reasons it is not feasible for the CE to distribute purchases among a variety of suppliers.

Routine purchases must not be broken into smaller purchase amounts to qualify for micro-purchasing. 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 goods and/or services and why the use of another procurement method is not possible or reasonable. If the CE breaks larger purchases into smaller amounts to qualify as a micro-purchase, then the costs are unallowable.

### **Informal Procurement Method: Small Purchase**

If purchasing services, supplies, or other property with an aggregate cost that is greater than \$10,000 and less than or equal to \$50,000, a CE may use small purchase procedures or a formal procurement method. The \$50,000 aggregate limit applies to:

- Single items (for example, rent), and
- Many items of the same general type (office supplies).

CEs cannot circumvent the procurement process by using small purchase procedures to award multiple contracts under \$50,000 to different vendors for a single item or many items of the same general type.

Small purchase procedures require CEs to obtain at least three price quotations from an adequate number of qualified sources. Price quotations must be documented; the CE must document the date, vendors consulted, and quotes received (including for verbal quotes). The U.S. Department of Agriculture (USDA) also allows for store advertisements to be used as documentation when receiving quotes.

When receiving price quotations, the CE must provide the vendor with a full and accurate description of the type of goods/services needed, so potential vendors can properly respond with an accurate quote.

If a CE is unable to obtain at least three price quotations, the CE must evaluate whether it has limited competition in any way. If the CE can document that it was unable to receive at least three price quotations after attempts to receive more quotes from qualified vendors, then the CE must document this.

Routine purchases must not be broken into smaller purchase amounts 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 goods 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 goods or services, formal competitive bids may provide lower costs.

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 this handbook.

### **Formal Procurement Method: Competitive Sealed Bids (Invitation for Bid)**

For purchases with an aggregate amount that exceeds the small purchase threshold, or \$50,000, CEs are required to follow formal procurement procedures (2 CFR § 200.320). One formal procurement method is competitive sealed bids.

CEs following this procurement method must ensure the following conditions are met:

- Bids are publicly solicited, using an Invitation for Bid (IFB), and are formally advertised to the general public;
- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time before the date set for opening the bids;
- The IFB will include:
  - any specifications and pertinent attachments, and
  - must define the items or services for the contractor/bidder to properly respond;
- Bids will be opened publicly at the time and place prescribed in the invitation for bids;
- A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- Any or all bids may be rejected if there is a sound, documented reason.

The following steps must be followed when soliciting competitive sealed bids:

1. Publicly announce the proposed contract at least once and not less than 14 calendar days before the opening of bids. Include the time and place of the bid opening in the public announcement.

2. Notify TDA about the time and place of bid opening at least 14 days before the bids are opened.
3. Open the bids publicly at the time and place stated in the invitation for bid.
4. Obtain TDA approval before awarding the contract, if required. Refer to *Texas Department of Agriculture Approval of Contracts* for more information (below).
5. Before program operations begin, CEs must:
  - a. Submit copies of all bids that were received, the name of and reason for selecting the contractor, a copy of the awarded contract, and certification of independent price determination.
  - b. Notify the chosen contractor by telephone, and then in writing, to provide the contractor with the necessary time to prepare an acceptance letter.
  - c. Notify the rejected bidders, in writing, of the name of the selected contractor.

All required documentation should be submitted via email to TDA at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include “TEFAP Documentation” and the name of the CE. For CEs that do not have access to email, please contact TDA at 1-877-TEX-MEAL (1-877-839-6325).

### **Formal Procurement Method: Competitive Proposals (Request for Proposal)**

Competitive proposals are another type of formal procurement method used when a contract award exceeds \$50,000. Competitive proposals are used when the conditions are not appropriate for the use of competitive sealed bids, such as when several factors are of equal or greater importance than price. A Request for Proposal (RFP) is used to solicit responses with this method.

CEs following this procurement method must ensure the following conditions are met:

- RFPs must
  - Be publicized
  - Identify all the evaluation factors and their relative importance
  - Be solicited from an adequate number of qualified sources (e.g., more than one vendor must submit an offer)
- The CE must have a written method for conducting technical evaluations of the proposals received and for selecting vendors.
- A firm fixed-price contract or a cost-reimbursable contract will be awarded to the proposal that is most advantageous to the program, with the price and other factors considered.
  - RFPs are generally more qualitative in nature.
  - The price must be the primary consideration when awarding a contract; however, a contract may be awarded to a proposal that is not the lowest in price.
  - In addition to price, the following factors may be considered: technical expertise, experience, years in business, marketing capabilities, etc.

## Noncompetitive Procurement Methods

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

- Inadequate Competition
- Sole Source
- Public Emergency or Unexpected Emergency Situation

### Inadequate Competition

Competition is deemed inadequate after the CE has actively and appropriately attempted to solicit offers from multiple sources, but the number of offers that met the solicitation specification and technical requirements (i.e., responsible and responsive offers) was less than expected. This would include when a CE receives only one responsible and responsive offer.

**EXAMPLE:** A non-competitive proposal may be used is when a CE is so remotely located that there is an extremely 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 solicitation has been publicized.

After engaging in competitive purchasing procedures, the CE does not need TDA approval to award a noncompetitive bid when there are a limited number of offers as long as documentation is retained by the CE demonstrating that the CE did not limit competition. Documentation would include, but is not limited to, the following:

- 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 their findings.

### Sole Source

The good and/or service is available only from a single (sole) source distributor, supplier, or manufacturer. Sole source noncompetitive procurement requires TDA approval.

Before offering a sole source noncompetitive contract, a CE must verify that the good and/or service can only be procured from a single source. A solicitation where there is only one offer is not necessarily a sole source. There may be other suppliers, distributors, or manufacturers that could have submitted an offer but chose not to.

**EXAMPLE:** Three companies commonly provide the type of equipment that a CE is attempting to procure. Company A chooses not to bid because it is unable to meet the delivery timeline. Company B no longer distributes the line of products that would have met the specifications and technical requirements. Therefore, Company C is the only offeror. In this situation, the single offer submitted is not a sole source. Rather, it is an inadequate competitive response to the solicitation. The CE must follow the guidance above for inadequate competition.

For a sole source method to be used, there must be only one possible source for the good and/or service. A CE cannot accept a statement from the supplier, distributor, or manufacturer as verification that the good and/or service is only available from a single source. To determine if the good and/or service is the sole source, a CE must:

- Attempt to solicit offers from other suppliers, distributors, or manufacturers
- Retain records that demonstrate its efforts to solicit offers for the good and/or service from other suppliers, distributors, or manufacturers.

TDA must approve all sole source procurement transactions before the award of the contract. To request approval, the CE must submit the Noncompetitive Procurement (Emergency or Sole Source) Request Form found on the SquareMeals.org website. In this request, the CE must include the following information:

- Description of the CE's actions to ensure that the supplier, distributor, or manufacturer is a sole source.
  - CE's actions may include questioning other vendors of similar goods/services to determine if those vendors can meet the precise needs of the CE. If not, written justification should be provided to TDA as to why a particular vendor would not qualify as a source.
- 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 part 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 is more than one supplier for the brand of equipment or the services. If there are multiple suppliers, the CE must follow normal procurement processes 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 will need to address this as appropriate to ensure full and open competition.

TDA will provide written notification of approval or disapproval.

### **Public Emergency or Unexpected Emergency Situation**

A public emergency (exigency) or unexpected emergency situation<sup>9</sup> will not permit a delay resulting from the additional time required for a competitive solicitation for the good and/or service. Emergency noncompetitive procurement requires TDA approval.

To request approval to use a non-competitive method during an emergency, the CE must submit the [Noncompetitive Procurement \(Emergency or Sole Source\) Request Form](#) found on the SquareMeals.org website. In cases of extreme emergency, a CE may call TDA directly to alert TDA about the situation. The request must still be submitted with the form, but a phone call will raise TDA's awareness of the need for an expedited response. In this request, the CE must include:

- Explanation of the circumstances that require an emergency purchase
- A detailed description of the goods and/or services to be procured
- Supplier, distributor, or manufacturer from whom the good and/or services will be procured
- Period the CE plans to use the noncompetitive method for the emergency

TDA will provide written notification of approval or disapproval.

Requests for TDA's review and approval of noncompetitive procurement processes may be submitted in writing to TDA via email at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include "TEFAP Noncompetitive Procurement Request" and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

### **Documentation of Procurement Action and Submittal to TDA**

CEs must document and maintain records that sufficiently detail the procurement process (2 CFR § 200.318(i)). These records must include, but are not limited to, the following:

- The reasons for choosing the specific method of procurement.
- Copies of all opened bids, a certificate of independent price determination, and an explanation for selecting a particular contractor.
- List of contractors to whom a copy of the IFB was sent.

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<sup>9</sup> An unexpected emergency situation might include a supplier cancelling a contracted delivery without adequate notice or a presidentially declared disaster.

- List of newspapers, magazines, or another method of public notification in which advertisements were placed and the dates that they appeared.
- Copy of the contract.
- The basis for the cost or price of a contract.

CEs must submit the following items to TDA:

- Notification of the date, time, and location for the bid opening a minimum of 14 calendar days before the bid opening date (for competitive bidding).
- Copies of all opened bids, a certificate of independent price determination, and a CE explanation for selecting a particular contractor.
- The list of contractors to whom a copy of the IFB was sent.
- A list of newspapers, magazines, or another method of public notification in which advertisements were placed and the dates that they appeared.
- A copy of the contract between the contractor and CE before the start of the program operations.
- A copy of the award letter and a copy of each letter sent to all rejected bidders after the bid award has been determined.

All required documentation should be submitted via email to TDA at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). For CEs that do not have access to email, please contact TDA at 1-877-TEX-MEAL (1-877-839-6325).

## Contract Provisions

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

### General Contract Requirements

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

### 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 more than \$10,000 must address termination for cause and convenience and include how it will be affected and the basis for settlement.

- Contract renewal options, including terms, conditions, and (as applicable) provisions for price changes.
- Contractor recordkeeping requirements.
- Procedures for a contract modification.

### **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 a contract modification.
- Sanctions for noncompliance.

### **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.

### **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).

### **Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

All contracts using federal funds must contain the contract provisions identified in 2 CFR Part 200, Appendix II, *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*. While all provisions may not apply to all contracts, CEs must ensure the appropriate provisions are included in all contracts.

### **Debarment and Suspension Certification**

TDA requires CEs to obtain debarment certifications for covered contracts. The three types of covered contracts are:

1. Any non-procurement transaction that involves federal funds of any amount.
2. Any procurement contract for goods or services above the small-purchase threshold of \$50,000.
3. Any procurement contract for goods or services where a person or entity will have a critical influence on or substantive control over the covered transaction. Such a person or entity includes, but is not limited to, the following:
  - a. consultant,
  - b. principal investigator,
  - c. provider of audit services required by TDA or a federal funding source, or
  - d. researchers.

In its written procedures, the CE must define how it will obtain a debarment and suspension certification from each of its contractors. The certification must ensure that the federal contract award will not be made to a contractor (vendor) listed on the government-wide exclusions in the System for Award Management (SAM). A CE may provide the debarment certification by having the contractor (vendor) do one of the following:

- Include the following debarment and suspension certification in the written agreement with the contractor:
  - (1) The prospective contractor certifies to the best of its knowledge and belief that it and its principals:
    - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
    - (b) Have not within three years preceding this agreement been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with the commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
    - (d) Have not within three years preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.
  - (2) Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this proposal.

- Require the contractor to sign and submit the TDA *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts* (H2048);<sup>10</sup> or
- Print the page from the System for Award Management (SAM) which indicates the contractor is not presently debarred or otherwise excluded from participation in the contract by any federal department or agency or by the State of Texas and maintains that document on file with the subcontract documents. The System for Award Management can be accessed at <https://www.sam.gov>.

### **Lobbying Certification (Applicable to contracts over \$100,000)**

Contractors that apply or bid for an award exceeding \$100,000 must provide the required *Certification Regarding Federal Lobbying* (Form H2049).<sup>10</sup>

If applicable, a contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award; in this case, a contractor must complete and submit *Standard Form – LLL, Disclosure of Lobbying Activities*<sup>11</sup>

### **Civil Rights Statement**

FNS Instruction 113-1, *Civil Rights Compliance and Enforcement – Nutrition Programs and Activities* requires all vendor agreements include an assurance of nondiscrimination.

### **Other Provisions**

Other required contract provisions include:

- Notice of awarding agency requirements and regulations about reporting.
- Notice of awarding agency requirements and regulations about patent rights concerning any discovery or invention that arises or is developed during or under such a contract.
- Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- A provision to allow for the audit, examination, excerpt, and transcription of records that are pertinent to the contract by the USDA, the Comptroller of the United States, TDA, and their authorized representatives.
- The mandatory retention of all required records **for three years after the end of the federal fiscal year to which they pertain.** If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the retention period, the records shall be kept until all issues are resolved.
- A requirement that mandates compliance with the energy efficiency standards and policies contained in the Texas Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

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<sup>10</sup> Located at [www.SquareMeals.org](http://www.SquareMeals.org). Choose Programs, The Emergency Food Assistance Program, TEFAP Administration and Forms, then input the name of the form into the appropriate search field.

<sup>11</sup> Located at [www.SquareMeals.org](http://www.SquareMeals.org). Choose Programs, The Emergency Food Assistance Program, TEFAP Administration and Forms, then input “Disclosure of Lobbying Activities” into the appropriate search field.

# Texas Department of Agriculture Approval of Contracts

A CE must forward the bid(s) to TDA for approval before awarding a contract if one or more of the following conditions apply:

- Only one bid was received in response to the solicitation,
- The bid selected was not the lowest bid that was received. The CE must also include an explanation for the award decision.

TDA responds to the request for contract approval within 5 working days of receipt.<sup>12</sup>

## Additional Guidance

### Compensation for Purchased Services

If a CE agrees or contracts with a consultant or subcontractor for the purchase of a service, the CE will compensate the consultant or subcontractor 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 subcontractor or consultant cannot require additional fees from the CE.

**EXAMPLE:** A subcontractor 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 subcontractor or consultant charges sales tax on the service provided, the tax must be extracted from the compensation (set percentage) that is stated in the contract or agreement.

### Disputes

It is a CE's responsibility to obtain legal counsel for the resolution of any disputes arising from participation in a third-party arrangement outside of the TEFAP Agreement.

### Administrative Costs

Administrative costs are limited to the CE's allowable expenses for planning, organizing, and managing TEFAP. These costs are approved as part of the CE's *Application for Participation/Plan of Operation* annual budget<sup>13</sup> and whenever budget amendments are submitted to TDA.

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<sup>12</sup> Requests for TDA approval may be submitted in writing to TDA via email at [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov). The email subject should include "TEFAP Contract Review" and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

<sup>13</sup> For more information, see *TEFAP Handbook, Section 2, Program Application*.

## Allocation by a “60/40” Formula

Each year, after reserving funds needed for TEFAP operation, TDA allocates available administrative funds to CEs and alternate CEs by county using a “60/40” formula. The “60/40” formula is based 60% on the number of county residents who live at or below the official poverty line, and 40% of the number of unemployed county residents. (7 CFR §251.3(h))

**EXCEPTION:** TDA allocates administrative funds to CEs and additional CEs (whose service areas are the same or overlap) based on USDA Foods usage information (see “Allocation by Usage Rates” below).

## Allocation by Usage Rates

TDA may contract with CEs serving the same or overlapping areas. For service areas that are the same or overlap, TDA allocates a fair share of administrative funds based on USDA Foods usage rates. USDA Foods usage rates are determined using historical and/or projected information on the number of meals and/or households served or using other information, as appropriate.

## Alternative Allocation Methods

As necessary, TDA may elect an alternative method of allocating administrative funds to CEs. An alternative method may replace or complement the current allocating method, as necessary, to

- ensure that TEFAP is available in areas where poor economic conditions are known to exist,
- ensure that all recipient groups have access to USDA Foods, and/or
- equitably distribute USDA Foods.

TDA may modify the terms of any TEFAP Agreement or contract, as needed, to ensure that reimbursements from administrative funds are equitable. However, before changing allocation methods or modifying contracts, TDA will consult with affected CEs and will provide notification of the change.

## Special Transportation Funds

According to the terms and conditions of individual TDA contracts and based on the availability of administrative funds, TDA may provide special transportation funds to CEs to offset the costs of distributing USDA Foods to rural or difficult-to-serve TEFAP recipients.

**NOTE:** TDA may limit special transportation funds reimbursements to the costs of distributing USDA Foods. If TDA chooses to reimburse the costs of distributing non-USDA Foods with special transportation funds, such reimbursements will occur only if funds are available during reallocation.

## Reimbursing Non-USDA Foods Costs

At the end of a federal fiscal year, after reimbursing CEs their allowable costs of distributing USDA Foods, TDA will reallocate available administrative funds and reimburse eligible CEs for costs of distributing non-USDA Foods.

## Allowable Costs

This section summarizes the federal cost principle requirements as found in 2 CFR part 200, subpart E, *Cost Principles*, which establishes the principles for determining the allowable costs incurred by CEs as part of TEFAP. Additional guidance in this area can be found in:

- 7 Code of Federal Regulations (CFR) Part 251, *The Emergency Food Assistance Program*,
- 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*
- Other applicable federal and state rules, regulations, and guidance for financial management systems including the CE's Agreement with TDA.

### Determining Allowable Costs

Allowable costs must be:

- Reasonable and necessary
- Allocable
- Consistent

A cost is considered **reasonable** if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing when the decision was made to incur the cost. (2 CFR §200.404)

A cost is considered **necessary** if it is of a type generally recognized as ordinary and necessary for the CE's operations or the proper and efficient performance of TEFAP.

A cost is **allocable** to TEFAP if the goods or services involved are chargeable or assignable to TEFAP per the relative benefits received. (2 CFR § 200.405)

A cost must be **consistent** with the policies and procedures that apply uniformly to both federally financed and other activities of the CE.

Costs that do not conform to the cost principles summarized in this section are unallowable. Reimbursement must be used only for those costs that are **reasonable** and **necessary** for TEFAP purposes and otherwise satisfy the allowability criteria outlined in 2 CFR Part 200. TEFAP purposes include the administration and operation of the TEFAP as outlined in 7 CFR Part 251. All costs must be budgeted in the approved *Application for Participation/Plan of Operation*.<sup>14</sup> All costs must be allowable expenditures under the TEFAP and any other applicable Federal, State, or local law and regulations or guidance.

A CE's costs must meet the following general criteria to be allowable under TEFAP (2 CFR §200.403):

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<sup>14</sup> For more information, see *TEFAP Handbook, Section 2, Program Application*.

- Necessary and reasonable for proper and efficient performance and administration of TEFAP.
- Be allocable to TEFAP under the Federal cost principles in 2 CFR Part 200.
- Be authorized or not prohibited under Texas State or local laws and regulations.
- Conform to any TEFAP-specific limitations or exclusions in 7 CFR Part 251 as well as any limitations or exclusion in 2 CFR Part 200.
- Be consistent with the policies and procedures that apply uniformly to all activities of the CE.
- Be accorded consistent treatment. A cost may not be assigned to TEFAP as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to TEFAP as an indirect cost.
- Be determined following generally accepted accounting principles (GAAP).
- Not be included as a cost or used to meet cost sharing or matching requirements of any other federal award in either the current or prior period.
- Be net of all applicable credits (purchase discounts, rebates, allowances, etc.) (2 CFR §200.406).
- Be adequately documented.

### **Allowable Costs in TEFAP**

The following costs are specifically identified as allowable in TEFAP (7 CFR § 251.8(e)) and including, but not limited to, the following:

- Nutrition education services provided to participants and used for training site staff members
- Transporting USDA Foods and administering the food distribution system
- Interpreters and translators for TEFAP materials
- Outreach services
- Audits
- General administration, including, but not limited to, personnel, warehousing, and insurance
- Monitoring and reviewing TEFAP 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)

CEs must obtain prior approval before charging to TEFAP any cost items designated by 2 CFR Part 200 as requiring prior approval.

### **Selected Items of Cost**

*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 Specialist<sup>15</sup> within two working days of any emergency situation.
- 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 the management of TEFAP. However, the CE may not claim the cost of maintaining central accounting records to meet all the organization’s requirements.

*Advertising*– 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 TEFAP
- The procurement of goods and services for the performance of TEFAP
- The disposal of scrap or surplus materials acquired in the performance of TEFAP except when the CE is reimbursed for disposal costs at a predetermined amount
- TEFAP outreach and other specific purposes necessary to meet the requirements of TEFAP

*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:

- Costs specifically required by TEFAP
- Costs necessary to the outreach effort for TEFAP, including costs of communicating with the public and press about specific activities or accomplishments that result from the performance of TEFAP
- 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 TEFAP.

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

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<sup>15</sup> Email [CommodityOperations@TexasAgriculture.gov](mailto:CommodityOperations@TexasAgriculture.gov) or call 1-877-TEX-MEAL (839-6325).

*Conferences*— Meetings and conferences include federal, state, county, national, or regional conferences. (Meetings and conference costs are different from 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 TEFAP training is presented concurrently with the meal service

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

With specific prior written approval from TDA, the prorated share of travel and registration fees when TEFAP 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

*Insurance*— The CE may include insurance costs that are required for the administration of TEFAP.

*Rental costs of real property and equipment*— Allowable when considered considering certain factors and limitations, which include

- rental costs of comparable property, if any;
- market conditions in the area;
- available alternatives; and
- 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 must 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 TEFAP. However, the CE may not claim the cost of maintaining legal staff with general responsibilities.

*Memberships, subscriptions, and professional activity*— Included in this category are membership costs in civic, business, technical, and professional organizations; and subscriptions to professional and technical periodicals. Allowable costs include the following:

- Membership fees and annual dues for the CE's membership in business, technical, and professional organizations related to TEFAP

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

*Materials and supplies, including computing devices*— Costs incurred for materials, supplies, and fabricated parts necessary to run TEFAP 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 TEFAP. These items may be charged as direct costs. For computing devices, charging as direct costs are allowable when the devices are essential and allocable to — but are not solely dedicated to — the performance of TEFAP. Cell phone expenses are only reimbursable if the phone and contract are directly in the name of the CE.

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

*Meals for Volunteers and Staff* – Site volunteers and staff (referred to here as *volunteers*) may eat at the site if doing so still allows distribution to all participants. For example, closing a site for volunteers to eat a meal limits distribution to participants.

Volunteers' meals may be claimed as an allowable cost if the costs are reasonable and the following records are maintained:

- Each volunteer's name
- Hours each volunteer worked
- Receipts, invoices, or other documents showing the cost of feeding volunteers
- Each volunteer's signature for each meal

*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 TEFAP.

*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 TEFAP, or the prorated share when necessary.

*Records*— Costs for supplies, storage, and maintenance of records necessary for the administration of TEFAP.

*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 because of operating TEFAP.

*Training and education*— The cost of training and education provided for TEFAP employee development.

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

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 following 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-TEFAP activities.

Vehicle Expenses. When employees use their personal vehicle or a CE's vehicle to conduct TEFAP business, the reasonable cost is an allowable administrative cost.

Each CE may develop its travel form containing these elements:

- The date of each trip
- The driver's name
- The mileage
- The origin and destination of each trip
- Parking costs
- 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 TEFAP. The CE must maintain documentation to reflect the following:

- The traveler's participation is necessary for TEFAP.
- 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.

## **Adding or Deleting Allowable Costs**

If necessary to ensure the equitable distribution of USDA Foods, TDA may, after consulting with the affected CEs and other stakeholders identified by TDA, change policy to add or delete reimbursable costs of distributing USDA Foods.

## **Unallowable Costs**

Federal regulations identify specific costs or categories of costs that cannot be charged to any federally funded program. These costs are never allowed. Unallowable costs are generally defined in 2 CFR Part 200, subpart E under “General Provisions for Selected Items of Cost” (2 CFR § 200.420-476). Expenditures by CEs that are not applicable to TEFAP objectives are considered unallowable.

CEs are responsible for understanding the principles to be applied in establishing the allowability of certain items involved in determining the cost. Failure to list a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost and based on the principles described above and in 2 CFR §§ 200.402 – 411 (2 CFR §200.420).

Unallowable costs include, but are not limited to, the following:

- Administrative costs not approved by TDA,
- Bad debts,
- Contingencies,
- Contributions and donations,
- Entertainment,
- Fines and penalties,
- Fundraising,
- Interest and other financial costs, such as insufficient funds/returned check charges and late payment fees,
- Legislative expense,
- 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),
- Disallowed costs in the current or prior program years, and
- Personal income taxes, corporate income taxes, and taxes resulting from non-TEFAP operations.

## **Shared Maintenance Fees**

Shared maintenance fees are not an allowable administrative cost. TDA will not reimburse this expenditure. CEs may directly charge recipient agencies (RAs) their usual and customary shared maintenance fees.

At its discretion, TDA can require CEs to reduce or waive shared maintenance fees.

(Texas Administrative Code (TAC), Title 4, Part 1, §26.109(f))

## Capital Expenditures in TEFAP – Depreciation

In TEFAP, capital expenditures<sup>16</sup> are only allowable as direct costs with prior approval of TDA.

The loss in value of a CE's capital assets allocable to TEFAP may be capitalized and the depreciation claimed as an allowable cost in TEFAP. However, like other costs, this must be submitted to TDA for review and approval as part of the CE's budget. Additionally, if the capital expenditure benefits other programs, the depreciation for the capitalized costs must be expensed proportionately across all programs that benefit from the capital asset.

**NOTE:** Tangible capital costs must be depreciated to comply with the cost principles described above in *Allowable Costs*. Reimbursements for capital expenditures must be used only for those tangible capital costs that are allocable, reasonable, and necessary for accomplishing the objectives of TEFAP.

Depreciation allocates the tangible costs of a CE's fixed assets to periods of TEFAP operations benefiting from the use of the assets. This means the CE's costs are recognized over a period that represents the useful life of the capital assets via depreciation. This matches the cost of an item (capital asset) to the entire period it is used, which may not represent when the CE incurred the cost. A CE may claim the loss in value of its capital assets (buildings, capital improvements, equipment, motor vehicles, etc.) allocable to TEFAP as an allowable cost by depreciating the value of the capital asset as follows:

1. Depreciation of capital assets must follow generally accepted accounting principles (GAAP). The method of computing depreciation must be consistently applied for all like assets for all affected federally sponsored programs. The depreciation method must result in equitable charges considering the use of assets and the benefits to TEFAP.
2. The computation of depreciation must be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. For computing depreciation, the acquisition costs exclude:
  - a. The cost of land;
  - b. Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where the title was originally vested or where it is presently located;

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<sup>16</sup> Helpful definitions from 2 CFR Part 200 related to capital expenditures are found below.

- c. Any portion of the cost of buildings and equipment contributed by or for the CE where law or agreement prohibits recovery;
  - d. Any asset acquired solely for the performance of a non-federal award; and
  - e. Any portion of the asset allocable to other program funds.
3. The period of useful life must take into consideration such factors as the type of construction, nature of the equipment, technological developments in certain areas, historical data, and renewal and replacement policies followed for the individual assets.
  4. Depreciation is not allowed on any assets considered fully depreciated.
  5. All depreciation claimed by the CE must be documented. Physical inventories must be taken at least once every two years to ensure the assets exist and are usable, used, and needed in the operation of the TEFAP. Records in memorandum form are acceptable to document depreciation. Depreciation records showing the amount of depreciation taken each period must be maintained. All records for the full depreciation period must be retained during the life of the asset and for 3 years after the end of the Federal fiscal year during which an asset item is fully depreciated. Records must be retained beyond this period if audit findings have not been resolved.

(2 CFR § 200.436)

For additional guidance in this area, see 2 CFR Part 200.

### **Helpful Definitions from 2 CFR Part 200 related to Capital Expenditures**

**Capital assets** mean tangible or intangible assets used in operations having a useful life of more than one year which are capitalized under GAAP. Capital assets include:

1. Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and
2. Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). (2 CFR § 200.12)

**Capital expenditures** mean expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life. (2 CFR § 200.13)

**Equipment** means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. (2 CFR § 200.33)

**General purpose equipment** means equipment that is not limited to research, medical, scientific, or other technical activities. Examples include office equipment and furnishings, modular offices,

telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. (2 CFR § 200.48)

### Resources for Depreciation

- Texas Comptroller of Public Accounts Website (search for “depreciation schedule” from the main page) at [www.comptroller.texas.gov/](http://www.comptroller.texas.gov/)
- Internal Revenue Service, Publication 946, *How to Depreciate Property* at <https://www.irs.gov/forms-pubs/about-publication-946>

## Additional Funding

USDA may provide additional TEFAP funding, most commonly for emergency or disaster situations. If additional funding is provided, TDA may mandate that these funds are used before standard TEFAP funding.