

Section 7000

Financial Management

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Section 7000 Financial Management

7100 Financial Controls

A CE must comply with all applicable financial management requirements in 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 7 CFR Part 248, *WIC Farmers' Market Nutrition Program (FMNP)*, and TDA policies, and must provide for the following:

- 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, Farmers' Market Nutrition Program #10.572;
 - Federal Award Identification Number (FAIN) and year;
 - Name of the Federal agency¹; and
 - Name of the pass-through entity², 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 identify adequately the source and applications of funds for federally-funded activities. The records must contain information pertaining to 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 cancelled checks, paid bills, payroll, purchase orders, and contract and subcontract award documents.
- Effective control over, and accountability for, all funds, property, and other assets (2 CFR § 200.302(b)(4)). 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)).

¹ USDA is the Federal agency for FMNP.

² TDA is the pass-through entity for FMNP.

- Written procedures for determining if costs are allowable in accordance with 2 CFR Part 200, Subpart E (2 CFR § 200.302(b)(7)).
- Internal controls that ensures the CE (2 CFR § 200.303):
 - *Manages* the FMNP 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 protected personally identifiable and other information.

These internal controls should be in compliance with guidance in “[Standards for Internal Control in the Federal Government](#)” issued by the Comptroller General of the United States³ or the “[Internal Control Integrated Framework](#)” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).⁴

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

7200 Conflicts of Interest and Ethical Standards

Organizations participating in the FMNP are required to disclose and identify any conflicts of interest and potential conflicts of interest including related party transactions, less-than-arms-length transactions, ownership interest in equipment, supplies, vehicles and facilities, or 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

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

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

- 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-arms-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 be able to 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, 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-arms-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 or cause the appearance of a conflict of interest in the operation of the FMNP, including, but not limited to, to the following:

- 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. Rental costs under less-than-arm's-length" leases must meet the requirements in 2 CFR §200.465.
- 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 farmers' markets and farmers.
- Asking farmers' markets or farmers to engage in any kind of business on the CE's behalf.

CE's must disclose annually any conflicts of interest or potential conflicts of interest including related party transactions, less-than-arms-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 the FMNP. 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

Information regarding conflicts of interest or potential conflicts of interests may be submitted in writing to TDA via email at CommodityOperations@TexasAgriculture.gov. The email subject should include "FMNP 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.

7210 Written Code of Standards – Ethical Conduct

In accordance with 2 CFR §§ 200.318 and 400.2, a CE must establish and maintain a written code of standards of conduct which 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 to 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 disclosure and prior written approval by TDA for all less-than-arms-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 be unable to be impartial in conducting a procurement action involving a related organization.

7300 Procurement

7310 Overview

Procurement is the orderly process of acquiring, by lease or purchase, goods and services such as facilities, equipment, bookkeeping, and auditing. FMNP 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 FMNP participation.

7320 The Procurement Process: A Multi-step Approach

A CE must follow the procurement process in order to ensure that all procurement requirements are met. As the process may take many months to complete, advanced planning and execution is 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 as follows:

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

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

7330 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(c)).

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 be reflective of the CE's 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 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

- **Selecting a Proper Procurement Method**

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

- 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 be a violation of federal requirements and may result in unallowable costs and/or findings.

⁵ See *Procurement Methods* in this section for more information.

- Cost Analysis/Equitable Distribution—How the CE will perform a cost analysis with every procurement action in excess of 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.

- **Solicitation Development**

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

- 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 limits full and open competition
 - 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(c)(1))

- Solicitations must clearly outline requirements the bidder must fulfill in order to be responsive (2 CFR § 200.319(c)(2))
- Renewal options
- Modification and change procedures, considering:
 - Communication of changes to contractor regarding initial estimated needs and actual needs
- Default and breach provisions, remedies, penalties
 - This includes how protests and disputes will be handled by the CE.
 - Supply copies of dispute resolution procedures to all potential bidders that includes name and address of person who will make a determination 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, IFBs, RFPs, contract terms and conditions, or any other procurement documents. CEs must draft their own specifications and procurement documents.
 - If a CE does allow 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 FMNP 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 be so limiting so as to 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 the following:

- 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
- 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
 - 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 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 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 of the CE's specifications as outlined in the solicitation
- *Responsible* means a contractor can and has the ability to 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 so as to ensure full and open competition (2 CFR § 200.319(d))
 - 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 FMNP CEs to have and use, if an FMNP 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
- 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 7200, *Conflicts of Interest and Ethical Standards* 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:

- Must be awarded to the lowest responsive and responsible bidder whose proposal is most advantageous to the FMNP with price as the primary factor
- The contract is a
 - formal, legally enforceable agreement
 - record of the procurement transaction
 - a dispute resolution mechanism
- The CE must first receive TDA approval of an award to a contractor that is not the lowest bidder prior to awarding the contract (for competitive sealed bids)
- The CE must monitor the contractor performance to ensure the following:
 - Performs in accordance with 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 prior to the start of FMNP 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 FMNP regulations and/or if a CE is not following its own procedures.

7400 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 types of procurement methods a CE must use when procuring (e.g., purchasing) goods and services are discussed in detail below 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 FMNP program, the appropriate procurement method must be followed.

7410 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.

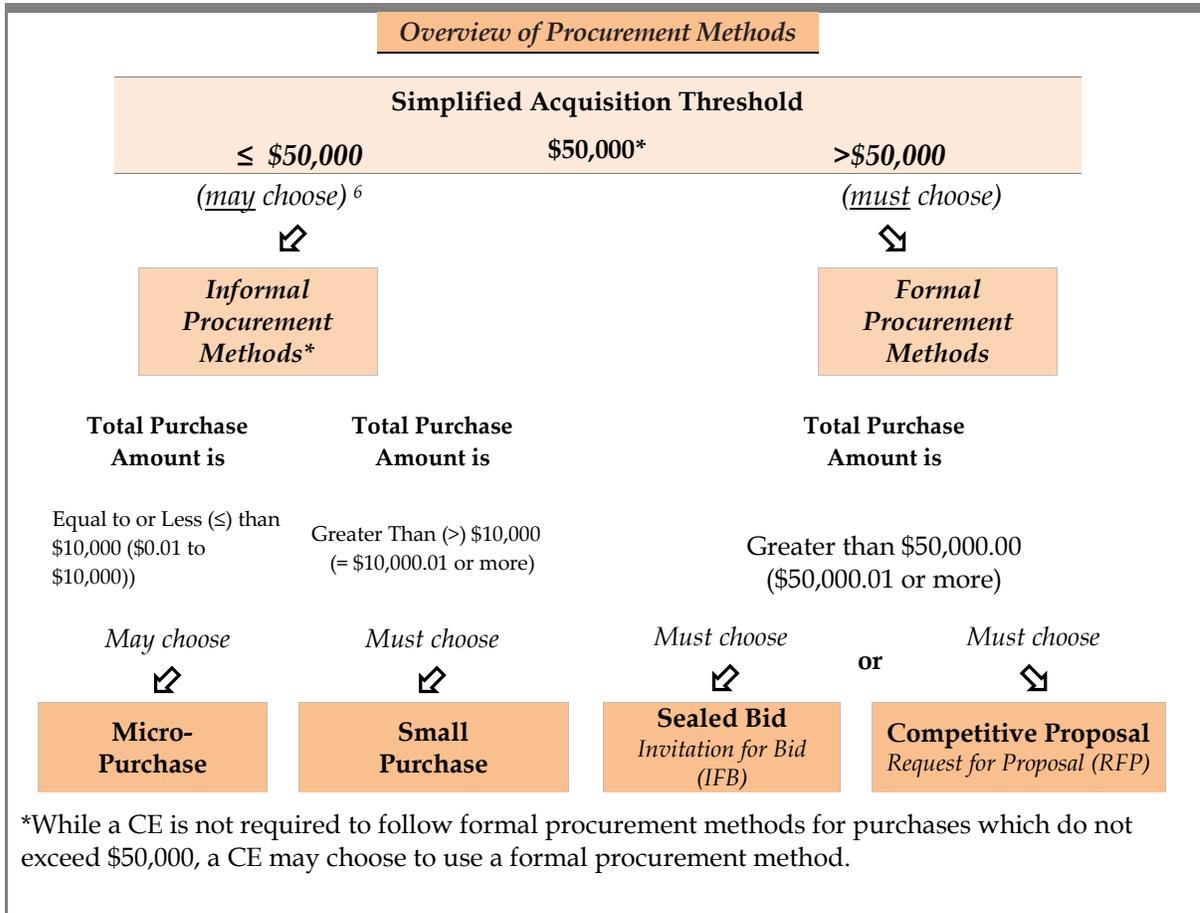
- If the purchase is *equal to or less* than the simplified acquisition threshold, the purchase may be made using an informal or formal method.
- If the purchase is *greater than* (exceeds) the simplified acquisition threshold, the purchase must be made using the formal process.

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 \$150,000, TDA has set a more restrictive threshold of \$50,000.

7420 Overview of Procurement Methods

Procurement regulations allow certain methods to be used by CEs to procure goods and services. Those methods are determined by aggregate amount of the contract award based on the value of the purchase, scope, and need of the good and service. Procurement methods are divided into two categories; informal and formal. Informal procurement methods may be used when the total cost is equal to or less than the simplified acquisition threshold, or \$50,000. Formal methods must be used when the estimated cost of the goods and services exceeds the \$50,000 simplified acquisition threshold.

With the exception of the noncompetitive proposal, the chart below provides an overview of the types of procurement methods a CE must use when conducting the procurement of goods and services.



7420.1 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, month, or annual purchases. Rather, it is an individual purchase with an individual invoice.

⁶ CE may choose to use a formal procurement procedure for a total cost that is equal to or less than the simplified acquisition threshold in order to get a better price.

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.⁷ Acceptable documentation includes, but is not limited to, the following:

- Newspaper advertisements from various suppliers/vendors
- Online advertisements from various suppliers/vendors
- Documentation of phone quotes from various suppliers to include the following:
 - 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 price was not the determining factor, such as:
 - Maps showing distance between vendors when 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 of its micro-purchases from one supplier and must, when feasible, “share the wealth” among suppliers. However, CEs that are located in rural areas may be limited in their ability to distribute purchases equitably among a number of 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 in order 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.

⁷ 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.”

7420.2 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 the following:

- 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). 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 is able to 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 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 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.

7420.3 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 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 prior to the date set for opening the bids;
- The IFB will include:
 - any specifications and pertinent attachments, and
 - must define the items or services in order 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 cost, 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.

7420.4 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 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
 - RFPs are generally more qualitative in nature
 - In addition to price, the following factors may be considered: technical expertise, past experience, years in business, marketing capabilities, etc.
 - 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
- A firm fixed price contract or a cost reimbursable contract will be awarded to the proposal that is most advantageous to the program, with price and other factors considered

7420.5 Additional Steps for Competitive Procurement

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

- 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.
- Notify TDA about the time and place of bid opening at least 14 days before the bids are opened.
- Open the bids publicly at the time and place stated on the invitation for bid.
- Obtain TDA approval before awarding the contract, if required. Refer to Item 7500, *Texas Department of Agriculture Approval of Contracts*.
- Before program operations begin, CEs must
- 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.
- Notify the chosen contractor by telephone, and then in writing, to provide the contractor with the necessary time to prepare an acceptance letter.
- 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. The email subject should include “FMNP 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).

7430 Noncompetitive Procurement Methods

Procurement by a noncompetitive 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

7430.1 Inadequate Competition

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

One example of when a noncompetitive proposal may be used is when a CE is so remotely located that there is 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 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.

7430.2 Sole Source

The good and/or service is available only from a single (sole) source distributor, supplier, or manufacturer. For sole source method to be used there must be only one possible source for the good and/or service. 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 sole source. There may be other suppliers, distributors, or manufacturers that could have submitted an offer but chose not to.

EXAMPLE: There are three companies that 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 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. In order to determine if the good and/or service is sole source, a CE must do the following:

- 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 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:

- Description of the CE's actions to ensure that the supplier, distributor, or manufacturer is 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.

7430.3 Public Emergency or Unexpected Emergency Situation

A public emergency (exigency) or unexpected emergency situation⁸ 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 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. The request must still be submitted in writing, but a phone call will raise TDA's awareness of the need for an expedited response. In its written request, the CE must include the following information:

- 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 of time 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. The email subject should include "FMNP 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.

7440 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.

⁸ An unexpected emergency situation might include a supplier cancelling a contracted delivery without adequate notice or a presidentially declared disaster.

- List of contractors to whom a copy of the IFB was sent.
- List of newspapers, magazines or other method of public notification in which advertisements were placed and the dates that they appeared.
- Copy of the contract.
- 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 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 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 other 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 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. For CEs that do not have access to email, please contact TDA at 1-877-TEX-MEAL (1-877-839-6325).

7450 Contract Provisions

7450.1 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 be applicable to all contracts, CEs must ensure the appropriate provisions are included in all contracts.

7450.2 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. researcher.

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 a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for 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 commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period 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); 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 maintain that document on file with the subcontract documents. The System for Award Management can be accessed at: <https://www.sam.gov> .

For a copy of *Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts* (Form H2048), access the TDA website at <http://www.squaremeals.org/>, go to “Programs,” click on “Farmers’ Market Nutrition Program,” choose “FMNP Administration and Forms,” then input the form title or form number in the appropriate search field.

7450.3 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).⁹

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*.¹⁰

⁹ This may be viewed and downloaded at <http://www.squaremeals.org/Programs/FarmersMarketNutritionProgram/FMNPAdministrationForms.aspx>

¹⁰ This may be viewed and downloaded at <http://www.squaremeals.org/Programs/FarmersMarketNutritionProgram/FMNPAdministrationForms.aspx>

7450.4 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.

7450.5 Other Provisions

Other required contract provisions include:

1. Notice of awarding agency requirements and regulations pertaining to reporting.
2. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention that arises or is developed in the course of or under such contract.
3. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
4. 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.
5. The mandatory retention of all required records for three years and four months after the end of the contract period. 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.
6. 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).

7500 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. Requests for TDA approval may be submitted in writing to TDA via email at CommodityOperations@TexasAgriculture.gov. The email subject should include “FMNP Contract Review” and the name of the CE. For CEs that do not have access to email, please contact TDA at (877) TEX-MEAL.

7600 Additional Guidance

7610 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.

7620 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 FMNP Agreement.

7700 Administrative Costs

Administrative costs are limited to the CE's allowable expenses for planning, organizing and managing the FMNP. These costs are approved as part of the CEs *Plan of Operation* (Form H1406) annual budget and whenever budget amendments are submitted to TDA.

7710 Allowable Costs

This section provides an overview of the Federal cost principle requirements as found in 2 CFR part 200, subpart E which establishes the principles for determining the allowable costs incurred by CEs as part of FMNP. Additional guidance in this area can be found in:

- 7 Code of Federal Regulations (CFR) Part 248, *WIC Farmers' Market Nutrition 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 CEs Agreement with TDA.

7710.1 Determining Allowable Costs

Allowable costs must be:

- Reasonable and Necessary
- Allocable
- Consistent

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 FMNP purposes and otherwise satisfy the allowability criteria set forth in 2 CFR Part 200, subpart E and USDA implementing regulations in 2 CFR Parts 400 and 415. FMNP purposes include the administration and operation of the FMNP. (7 CFR §248.12(a)) All costs must be budgeted in the approved FMNP *Plan of Operation* (Form H1406). All costs must be allowable expenditures under the FMNP and any other applicable Federal, State, or local law and regulations or guidance.

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

- Necessary and reasonable for proper and efficient performance and administration of the FMNP.
- Be allocable to the FMNP 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 FMNP-specific limitations or exclusions in 7 CFR Part 248 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 the FMNP as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the FMNP as an indirect cost.
- Be determined in accordance with 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.

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. 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 the FMNP. (2 CFR § 200.405)

A cost is **allocable** to FMNP if the goods or services involved are chargeable or assignable to FMNP in accordance with 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.

7710.2 Allowable Costs in FMNP

The following costs are specifically identified as allowable in the FMNP (7 CFR §§ 248.2 in the definition of administrative costs and § 248.12(b)):

- Administration and start-up,
- FMNP voucher issuance, or participant education covering proper redemption procedures,
- Nutrition education services provided to participants and guardians of participants, and used for training site staff members,
- Interpreters and translators for FMNP materials,
- Outreach services,
- Voucher and farmers' market management,
- Training,
- Required reporting and recordkeeping,
- Preparing contracts for farmers and farmers' markets,
- Audits and fair hearings, and
- Monitoring and reviewing FMNP operations.

CEs must obtain prior approval in accordance with 2 CFR Part 200, subpart E and USDA implementing regulations in 2 CFR Parts 400 and 415 prior to charging to the FMNP any capital expenditure and other cost items designated by 2 CFR Parts 200, subpart E, 400 and 415 as requiring prior approval. (7 CFR §248.12(a)(2))

7720 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 §§ 200.420-475). Expenditures by CEs that are not applicable to FMNP objectives are considered unallowable. (7 CFR §248.12(a)(3))

CEs are responsible for understanding the principles to be applied in establishing the allowability of certain items involved in determining 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,
- Fund raising,
- 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. Also included are disallowed costs in the current or prior program years.),
- Personal income taxes, corporate income taxes, and taxes resulting from non-FMNP operations,
- Constructing or operating a farmers’ market, and
- Use of FMNP funds to supplement congregate meal programs.

Unallowable costs may never be claimed for reimbursement or counted toward the State matching requirement.