

Section 7000

Financial Management

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NOTE: Highlighted text in this document reflects substantive changes to this handbook in Program Year 2020-2021. All highlights will be removed at the beginning of the next Program Year. Refer to the most recent Revision Notice for this handbook for a summary of updates.

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Financial Management

7100 Financial Controls

A CE's financial management must be in compliance with 2 Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 48 CFR Part 31, *Contract Cost Principles and Procedures*, 7 CFR Part 226, *Child and Adult Care Food Program*, FNS Instruction 796-2 *Financial Management – CACFP*, 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:
 - The Catalog of Federal Domestic Assistance (CFDA) title and number, for example, Child and Adult Care Food Program #10.558;
 - Federal award identification number (FAIN) and year;
 - Name of the Federal agency; and
 - Name of the pass-through entity, if any.
- Accurate, current, and complete disclosure of the financial result of each Federal award or program.
 - 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.
- 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.
- Comparison of expenditures with budget amounts for each Federal award.
- Written procedures to ensure:
 - Disbursement of funds is done in a manner that minimizes the amount of time between the CE's receipt of the funds to the disbursement of those funds whether disbursement is made by electronic funds transfer, checks, warrants, or payment by other means.
 - Request and use of advance payments only after other resources have been exhausted, and in accordance with 2 CFR 200.305.

- Written procedures for determining if costs are allowable in accordance with 2 CFR 200.302 & 2 CFR 200 Subpart E and FNS Instruction 796-2 *Financial Management – CACFP*.
- Internal controls that ensures the CE:
 - *Manages* the Program 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* protected personally identifiable information 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 States or the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Standards for Internal Control in the Federal Government

<http://gao.gov/cghome/index.html>

Internal Control Integrated Framework

<http://www.coso.org/ic.htm>

Reference also Section 2000, *Eligibility and Application Requirements*, Item 2222, *Performance Standards, Viability, Capability and Accountability (VCA)*. VCA processes and procedures submitted during application must be in compliance with the above and must be updated as changes occur.

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

7200 Conflicts of Interest

Organizations participating in the CACFP are required to disclose and identify 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.

A less-than-arms-length transaction is one under which one party to the transaction is 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. See also Arms-length bargaining and related party transaction in Exhibit A of *FNS Instruction 796-2, Financial Management – CACFP*.

Related parties include, but are not limited to:

- 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 CE cannot allow a conflict of interest or potential conflicts of interest when procuring goods and services.

NOTE: A sponsor may require a site to have a written code of standards of conduct as part of corrective action if needed.

No officer, agent, consultant, contractor, volunteer, or other employee of a CE, or sponsored site, may engage in any activity which causes or could cause a conflict of interest in the operation of the CACFP, 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 CE's sites.
- Asking sponsored sites to engage in any kind of business on the CE's behalf.

A CE must establish and maintain a written code of standards of conduct which govern the performance of its officers, employees, or agents. 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 to which an entity or certain persons connected to them, has a financial interest.
- 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 disciplinary actions in the event of violation.

All less-than-arms-length transactions must be disclosed to TDA and requires specific prior written approval before the cost is incurred and included in the budget.

7300 Procurement

NOTE: School Food Authorities operating the National School Lunch Program (NSLP) and CACFP have the option to comply with NSLP procurement standards as outlined in 7 CFR 210.21 and TDA's Administrator's Reference Manual for NSLP (located on SquareMeals.org).

Procurement is the orderly process of acquiring, by lease or purchase, goods and services such as food, meals, equipment, bookkeeping, and auditing. Procurements must be conducted in a manner that allows for full and open competition (meaning everyone that wants to bid is on a "level playing field" and has the same opportunity to compete.) A contracting entity (CE) must comply with state and federal procurement requirements. These requirements enable the purchase of goods and services at the best available price and avoid conflicts of interest when making purchases.

Costs incurred through improper procurements are unallowable. If TDA disallows costs because of improper procurements, it may be determined that the food service operation is not nonprofit and could result in adverse action, up to and including termination of the CE's or sponsored site's participation in the CACFP.

NOTE: Sponsors are responsible for ensuring their sites comply with procurement requirements and operate a nonprofit food service. By contracting with TDA to be a sponsor in the CACFP, the CE has accepted final administrative and financial responsibility for the

operation of the Program, including the operation of the Program at sponsored sites. Any fiscal action as a result of a sponsored site's failure to operate the Program correctly, including procurement, will be taken against the sponsor.

7310 Procurement Procedures

CEs must have procurement procedures in place that provide the steps and actions that will be taken to properly procure goods and services in accordance with Program requirements. The level of detail should be reflective of the CEs operations.

The procedures must provide that proposed procurement actions will be reviewed by the CEs 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. The procedures must encompass each procurement method discussed in this handbook. The procedures must also include the following elements:

1. Forecasting and scheduling of purchases: plan procurements for the Program Year (PY) by evaluating resources, projecting expenses and determining needs prior to initiating a procurement process by assessing:
 - Current approach, such a meal preparation (self-preparation, central kitchen, need for a Food Service Management Company (FSMC)).
 - Storage capacity.
 - Equipment.
 - Resources, such as income/revenue and staff.
 - Other operational needs.
2. Selection of the procurement method: generally the aggregate amount of the goods or services will determine the procurement method to be used. Aggregate cost means the total cost of the item(s) purchased in a single transaction. A single transaction occurs when goods or services are purchased from the same supplier at the same time, regardless of the quantity of items purchased or the length of payment terms, i.e., payment over a specified period of time such as 12 months. CEs must have in place any other factors, such as distance, storage, etc., and decision steps that will be used to determine the method. Include steps to:
 - Develop solicitations.
 - The description and scope (specifications) must be in line with what is being procured.
 - Must be clearly stated so that bidders will understand and can be responsive to the need.
 - Must identify all of the requirements that bidders must fulfill so that changes do not need to be made to a contract after it is awarded, including identification of prohibited expenditures.

- Must include evaluation and scoring factors, with cost as the primary factor.
 - Must not contain features which unduly restrict competition.
 - Advertise.
 - Content must be sufficient to identify:
 - General nature of the goods or services to be procured.
 - Method of procurement to be used.
 - How a bidder can obtain the solicitation or more information.
 - The due date for responses to the solicitation.
 - Methods of advertisement must allow for full and open competition.
 - State, regional or nation-wide newspapers.
 - Trade periodicals.
 - Internet sites.
 - Direct mailings (small purchase procurement method only).
 - Affirmative steps to assure small and minority businesses and women's business enterprises are utilized when possible.
 - 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 so as to permit maximum small and minority business and women's business enterprises participation.
 - Where the requirement permits, establishing 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.
3. Evaluating proposals/offers:
- Determine if bids were received from responsible and responsive contractors.
 - Responsive means contractor's products or services meet the specifications.
 - Responsible means a contractor that can and will successfully fulfill the terms and conditions of the proposed procurement.
 - Integrity.
 - Compliance with public policy.
 - Record of past performance.
 - Financial and technical resources.
 - Must use cost as the primary factor.
 - Must be evaluated without consideration of any included unallowable cost provisions.

4. Awarding and managing the contract:
 - Must be awarded to the lowest responsive and responsible bidder, or the responsible firm whose proposal is most advantageous to the Program with price as the primary factor.
 - Legally ensures commitment.
 - Provides record of the deal.
 - Ensures contractor performs in accordance with the terms, conditions, and specifications of the contract by verifying:
 - The quantity and quality of the goods and services requested.
 - The goods and services were received on time.
 - The prices charged for the goods and services are the prices bid and within budget.
5. Protest procedures: provide dispute resolution for any action which diminishes open and free competition
 - Supply copies of dispute resolution procedures to all potential bidders.
 - Include name and address of person who will make a determination whether or not the protest should be sustained.
 - Disclose information regarding all protests to TDA.

CEs should also include any other factors, in both the solicitation and the resulting contract, that affect the bidder such as a provision which allows for individual competitive procurement of similar items during peak seasons, or to allow small minority or women-owned farms the opportunity to bid, or during emergency situations, etc.

A CE cannot allow any entity bidding for a contract award to develop:

- Specifications.
- Requirements.
- Statements of work.
- Invitations for bids.
- Requests for proposals.
- Contract terms and conditions.
- Other procurement documents.

CEs must draft their own specifications and procurement documents (exception – procurements for vended meals must be done using TDA’s Invitation for Bid and Contract for Purchased Meals. See below).

Any CE that copies a list of features or evaluation and ranking criteria drafted by a potential vendor and then permits that potential vendor to submit a bid has violated both Federal and State procurement regulations.

While it is understood that CEs have broad discretion in gathering information for use in connection with procurements, any information from potential bidders must be appropriately modified to develop tailored specifications; otherwise these bidders must be excluded from competing. This is to ensure objectivity and eliminate unfair competitive advantage.

EXCEPTION: If CEs choose to use a vendor's information or assistance in developing procurement documents and the vendor is allowed to compete for the award, then the CE or sponsored site **must not** use any CACFP funds for the resulting award.

NOTE: CEs purchasing meals from a school food authority that participates in the National School Lunch Program (NSLP) are not required to conduct procurement for purchased meals.

7320 Procurement Methods

Depending on the circumstances, a CE must choose from among the following methods of procurement:

Informal – costs equal to or less than \$50,000

Micro-purchase – may only be used if the costs are equal to or less than \$10,000
Small purchase

Formal – costs greater than \$50,000

Competitive sealed bids
Competitive proposals
Noncompetitive proposals

Regardless of the dollar amount or the method of procurement used, CEs must ensure full and open competition, and must follow their written procurement procedures.

CEs cannot:

- Require unreasonable credentials for potential bidders when qualifying them to do business.
- Allow noncompetitive practices between suppliers.
- Permit organizational conflicts of interest.
- Impose unnecessary experience and bonding requirements on suppliers who seek the CE or sponsored site's business.

CEs can choose to use a formal procurement method for items that fall below the \$50,000 threshold; but cannot choose to use an informal procurement method for items that exceed the \$50,000 threshold.

7320.1 Micro Purchases

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

Additionally, as required in Item 7310, *Procurement Procedures*, specifications must have been developed to ensure the determination that micro-purchase is the appropriate procurement method is correct, but also to ensure an accurate comparison of the cost.

When using the micro-purchase method formal quotes and a formal cost analysis is not required. However, the CE/site must ensure that the cost of the product and/or service is reasonable, i.e., a cost comparison. Cost comparisons can be as simple as a list of commonly purchased items with comparison prices from two to three different vendors, newspaper advertisements, or spreadsheets. The method and frequency must be documented in the written procedures.

To the extent practicable, the CE/site must distribute micro-purchases equitably among qualified suppliers/vendors. This can be accomplished in many ways, such as alternating suppliers/vendors each month, or purchasing some items from one vendor and other items from another vendor on the same day. The CE/site must still ensure the cost is reasonable and that micro-purchase is the proper method.

Any costs that the CE incurs as a result of the CE intentionally breaking up larger purchases into smaller amounts to qualify under the micro-purchase threshold are unallowable costs.

7320.2 Small Purchases

If purchasing services, supplies, or other property with an aggregate cost less than or equal to \$50,000, small purchase procedures may be used.

Small purchase procedures require a CE, or sponsored site, to obtain price quotations from an adequate number of qualified sources (for example, three vendors). Acceptable forms of price quotations include but are not limited to:

- Newspaper advertisements from various suppliers/vendors.
- Online advertisements from various suppliers/vendors.

- Documentation of phone quotes from various suppliers/vendors to include:
 - Supplier/vendor name.
 - Name of person providing information.
 - Date(s) of contact.
 - Information provided, including product and pricing.

Prior to obtaining quotes, as required in Item 7310, *Procurement Procedures*, specifications must have been developed to ensure the determination that small purchase is the appropriate procurement method is correct, but also to ensure the quotes from suppliers/vendors are for the same goods and services.

7320.3 Competitive Sealed Bids

Competitive sealed bids must be used if a purchase is more than \$50,000 and the CE, or sponsored site, can:

- Completely and accurately describe the goods or services it wants to purchase.
- Locate two or more responsible bidders that are willing to compete for the business.
- Award a firm-fixed price contract.
- Choose from among bidders mainly on the basis of price.

EXAMPLE: A CE purchases milk at a cost of \$57,000 per year. There are several milk vendors in the community. Since the purchase is over \$50,000 and this type of purchase lends itself to sealed bids, the CE must use this method of procurement.

When conducting a competitive sealed bid, CEs will:

- Advertise publicly (for example, in a newspaper).
- Solicit bids from an adequate number of known suppliers.
- Clearly describe the items or services to be purchased in the invitation for bid.
- Publicly open the bids at the time and place stated in the invitation.
- Award the contract to the lowest responsive and responsible bidder that meets the requirements of the invitation.
- Document any and all reasons a bid is rejected.

EXCEPTION: A CE or sponsored site may award a contract to a supplier that is not the lowest bidder if the CE has sound documented business reasons for doing so and this documentation is submitted to and the contract approved by TDA prior to the award.

7320.4 Competitive Proposals

Competitive proposals for purchases of \$50,000 or more should be used when the conditions for sealed bids do not exist. The competitive proposals method of procurement requires a CE, or sponsored site, to publicize a request for proposals (RFP) and solicit proposals as well. After the proposals are received the CE or sponsored site will evaluate responsive proposals and upon award, may conduct contract negotiations with two or more bidders.

When using competitive proposals, CEs must:

- Solicit proposals from an adequate number of qualified sources.
- Publicize the RFP.
- Honor all requests to compete as far as practical.
- Identify all evaluation factors and their relative importance in the RFP.
- Have a written procedure for evaluating proposals and for determining respondents for negotiation and for selection.
- Award contracts to the highest scoring respondents.
- Promptly notify unsuccessful respondents.

EXAMPLE: A CE wants to purchase accounting services that would cost more than \$50,000 per year. Since several factors are of equal or greater importance than price, the CE may want to use competitive proposals for this purchase.

7320.5 Non-Competitive Proposals

In non-competitive proposals, the CE negotiates with a single source. This method may be used only when the CE has submitted a written request and has been granted permission from TDA. TDA may approve the use of this method when one or more of the following conditions exist:

- The item that the CE wants to purchase is only available from one source;
- A public exigency or emergency exists, i.e., when the urgency for the requirement will not permit a delay incident to competitive solicitation;
- After solicitation of a number of sources, competition is determined inadequate.

Sole Source

The product 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 product and/or service. Sole source noncompetitive procurement requires TDA approval.

Before offering a sole source noncompetitive contract, a CE must verify that the product and/or service can only be procured from a single source. A procurement 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 cooling 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 for that type of noncompetitive procurement.

For a sole source method to be used there must be only one possible source for the product and/or service. A CE cannot accept a statement from the supplier, distributor, or manufacturer as verification that the product and/or service is only available from a single source. In order to determine if the product and/or service is 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 product 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 review may include questioning other vendors of similar products/services to determine if those vendors can meet the precise needs of the CE. If not, 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 Exigency or Emergency

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

To request approval to use a noncompetitive method during an emergency, the CE must submit a request to TDA in writing (paper, fax, or email). In cases of extreme emergency, a CE may call TDA directly to alert TDA about the situation. 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 products and/or services to be procured
- Supplier, distributor, or manufacturer from whom the product 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.

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 only pursue a noncompetitive procurement if it has ensured that the specifications in the original IFB or RFP are not too restrictive, thereby, limiting other potentially qualified bidders, and that the proposal 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:

- 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.

Requests for TDA’s review and approval of noncompetitive procurement processes may be submitted in writing to TDA as follows:

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

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

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

Overnight to: Texas Department of Agriculture
Food and Nutrition
ATTN: Procurement Specialist
1700 North Congress Avenue
Austin, Texas 78701

7320.6 Geographic Preferences

CEs may apply geographic preferences when procuring unprocessed locally grown or locally raised agricultural products.

The CE or sponsored site must include in its written procurement policies and procedures its definition of *local* for the use of this option. Definitions might include “within the state”, “within specific counties”, or “within a specific number of miles”. This means products procured using geographic preference must come from animals or produce that are caught (e.g. fish), raised or grown in the area defined by the CE or sponsored site as “local.” The CE or sponsored site must ensure its definition does not restrict full and open competition (for example, a definition that includes “within 5 miles”), and that it adheres to its own definition or it risks the procurement being determined unallowable.

Geographic preference can **only** be applied to products which are locally grown and locally raised, and that have not been cooked, seasoned, frozen, canned or combined with any other products. This does not preclude foods that have been handled and prepared to make them usable, such as washing vegetables, bagging greens, chopping, cutting, slicing, dicing or shucking, butchering livestock and poultry, pasteurizing milk and putting eggs in a carton, as well as using a minimal amount of preservatives to prevent spoilage.

Allowable products include, but are not limited to:

- Fruits.
- Vegetables.
- Meats (including fresh or unprocessed frozen products and formed products such as patties that contain no additives or fibers).
- Fish (including whole, form, filets or nuggets that contain no additives or fillers).
- Poultry (including whole, form, or various cuts).
- Dairy (applies to unflavored pasteurized fluid milk that meets State and local standards only).
 - Flavored milk or any processed dairy products, such as yogurt, cheeses, etc. are not allowed.
- Eggs.
- Grains (including quinoa, rice, barley, etc. in whole form and other grains in ground form such as flour).

The option to allow geographic preferences when procuring unprocessed locally grown or locally raised agricultural products does not eliminate the requirement for procurements to be conducted according to the policies and procedures outlined in this handbook.

7330 Procurement using Cooperatives, Agents, and Third-party Entities

Cooperatives, agents and third-party entities can be beneficial in assisting CEs in obtaining better buying power and ensuring proper procurement when the CE does not necessarily have the technical understanding of the process. However, using any of the following options does not relieve the CE from administrative and financial responsibility for proper procurement as conducted by the CE itself or on behalf of the CE using one of the methods discussed below.

These methods are not a type of procurement and a CE using any of the below methods must ensure that procurements are conducted in a manner maximizing full and open competition, and must ensure costs are necessary, reasonable, allocable and otherwise allowable per 2 CFR 200.403, applicable cost principles in 2 CFR 200, subpart E, and FNS Instruction 796-2, *Financial Management – Child and Adult Care Food Program*.

Cooperatives

A cooperative that is comprised solely of CEs may procure as a group and must do so in compliance with the procurement standards that apply to the CE (7 CFR 226.22, and/or 48 CFR Part 31, and 2 CFR 200.318-.326). This includes complying with all State and local procurement standards, if more restrictive, and publishing solicitations and contracts with all terms, conditions, required contract provisions, as applicable, and clearly identifies all product descriptions, specifications, and estimated quantities required. Further, each CE that is a member of the cooperative is responsible for monitoring contractor performance to ensure compliance with all contract provisions. Written agreements delineating roles and responsibilities are encouraged.

Agents

An agent is a person or business authorized to act on a client's behalf. An agency may be necessary for procuring goods or services when/if the CE does not have the necessary technical understanding of the equipment, service, food or other food service supplies to be purchased; or lacks time or expertise to conduct a proper procurement. A procurement agent represents a special fiduciary relationship of trust between itself and the CE. In other words, the agent must be contractually required to conduct all competitive procurement methods with the CE's interests solely in mind. An agent's services in excess of the micro-purchase threshold currently set at \$10,000 must be competitively procured in accordance with Federal procurement methods outlined in 2 CFR 200.320.

When an agent is needed to procure goods and services on behalf of the CE, the CE must first determine if the agent fee is within the micro-purchase threshold or if a competitive procurement method must be conducted for the services of the agent.

If a solicitation is required, the scope of duties and responsibilities must be clearly defined as well as how prices/costs for services are to be quoted for evaluating agents' bids/responses for contract award.

Some agents often charge fees to vendors who pass such fees on to the CE. CEs must not enter into a contract with an agent that charges the CE a fee **and** charges the vendor a fee. The CE must include in its solicitation when procuring the agent, if the agent will be paid based on a:

- Flat fixed-rate for services, or
- Fee based on purchase unit, volume or cost. Fees based on a purchase unit, volume or cost must be fixed (fees cannot be a percentage of cost). If this method is selected agents cannot be considered if they do not openly provide the full fixed fee rate based on price per purchase unit, volume or cost for their service, or
- Vendor fee charged to the vendor by the agent which is paid to the CE and used by the CE to pay the agent's fee. If this method is selected the vendor fee must be based on a purchase unit, volume or cost must be fixed (fees cannot be a percentage of cost). If this method is selected agents cannot be considered if they do not openly provide the full fixed fee rate based on price per purchase unit, volume or cost for their service.

CEs must include language that details "when procuring goods or services for their client, agents must follow procedures consistent with 2 CFR Part 200.318-.326 and applicable Program regulations" which includes State and local procurement requirements if more restrictive. Published solicitations and contracts must include all terms, conditions, required contract provisions, as applicable, and all products descriptions, specifications, and estimated quantities required.

The procurement agent must confirm in its response to the solicitation that it will represent the CE and will have the CE's best interests exclusively in mind when preparing solicitations for publication on the CE's behalf. The agent may not have any conflict of interest, real or apparent. For example, the agent may not use pre-existing contractual relationships in lieu of conducting a competitive procurement on behalf of the CE.

In order to ensure free and open competition, the procurement agent must:

- Work closely with the CE to understand the CE's needs,
- Develop solicitations on the CE's behalf consistent with 2 CFR Part 200.318-.326 and applicable Program regulations as required for the CE as noted above,

- Award contracts only to responsible contractors whose bid/offer is lowest/most advantageous to the Program with price as the primary factor,
- Award fixed-price contract, and
- Monitor the ensuing contract on behalf of the CE as required in 2 CFR 200.318(b), if specified, in the original solicitation and resulting contract.

NOTE: an agent publishing a solicitation on behalf of a CE may not respond to such solicitation, as such would constitute an unfair advantage and be in violation of Federal procurement requirements as found in 2 CFR 200.319(a).

Third-Party Entities

Third-Party entities include State procurement agency agreements, inter-agency agreements, group purchasing organizations, group buying organizations, and third-party vendors.

- State procurement agency agreements: This is an inter-governmental agreement with the State which may include public, private, and non-profit entities. This agreement allows CEs to purchase from the State's contracted sources. When competitive procurement methods are conducted by the CE, this agreement may be one source of prices when using small purchase procedures, sealed bids, or competitive proposals, as applicable.

The CE may consider a State agency's procurement as one source for procurement. For example, if the purchase is under \$10,000, the CE may purchase directly from the State's procured sources as long as the prices are reasonable and the CE equitably distributes all procurements among all qualified suppliers available. If the procurement is less than \$50,000, the CE may obtain a price or rate quotation from the State's procured sources, among other qualified sources available. For procurements over \$50,000, a CE must first conduct a cost analysis (2 CFR 200.323(a)) then develop a solicitation (sealed bid or competitive proposal) and may use vendors and prices from the State's contract as one source. Remember, it is not the State procurement agency agreement that is the competitive procurement; rather, this agreement gives the CE further options of sources to utilize to ensure full and open competition.

- Inter-agency agreements: This is an agreement which may include public, private, and non-profit entities formed to procure goods and services together. When competitive procurement methods are conducted by the CE, this agreement may be one source of prices when using small purchase procedures, sealed bids, or competitive proposals, as applicable.

CEs purchasing through an inter-agency agreement includes entering into the inter-agency agreement to competitively procure common goods and services, then developing and publishing solicitations through sealed bids/competitive proposals. These solicitations must include procurement procedures consistent with 2 CFR Part 200.318-.326 and include the terms, conditions, required contract provisions, as applicable, and all products, descriptions, specifications, and estimated quantities. Further, each CE is responsible for monitoring contractor performance to ensure compliance with all contract provisions.

- **Group Purchasing Organizations, Buying Organizations, and Third-Party Vendors:** Collectively referred to here as GPOs, these often include CEs and non-CEs (entities that do not participate in a child nutrition program) such as public and private schools, hospitals, universities, law enforcement, public works, etc. who join a third-party company or service provider. GPOs could be private for-profit or nonprofit entities. A GPO is typically structured in a way that may include a membership fee paid by member users, who are then granted access to the GPO price list of products and services. When competitive procurement methods are conducted by the CE, GPO price lists may be one source of prices when using small purchase procedures, sealed bids, or competitive proposals, as applicable.

The business model of a GPO may include a variety of services of which facilitating procurement for members/member agencies and procuring products and services from an external source such as an affiliated or unaffiliated full-line distributor are included. Membership involves paying a fee in addition to the price of products and services purchased. However, paying a fee does not constitute compliance with the competitive procurement process that CEs are required to conduct when procuring products and services. A CE may pay a membership fee to multiple GPOs and when using micro or small purchase procedures may consider the price for products from GPOs as one source among an adequate number of qualified sources. For the procurement of good and services greater than \$50,000, CEs must publish sealed bids or competitive proposals to which GPOs may respond provided the GPO has not drafted such solicitations. Likewise, responses to bids/proposals must be evaluated by the CE to determine the lowest responsible and responsive bidder/offeror with price as the primary factor. Purchasing goods and services from a GPO without conducting a compliant procurement process is limited to the micro-purchase threshold. Under the micro-purchase threshold, transactions are below \$10,000, prices would be reasonable, and purchases would be equitably distributed among qualified suppliers.

7340 Contracts

Contracts must be sound, complete, and include certain required elements as discussed in Item 7330.2, *Contract Provisions*.

The CE or sponsored site will award a fixed-price contract.

Fixed price means a price that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to a standard index.

Cost reimbursable contracts are unallowable. These include cost plus fixed-fee, cost-plus-incentive fee, cost-plus-award fee, and cost plus percentage of cost contracts. Cost reimbursable contracts provide for payment of allowable costs plus the payment of a fixed fee to the contractor.

Forward contracts (ones in which products are bought or sold at a specified time in the future at a price agreed upon today) with local producers or contracts with a Community Supported Agriculture (CSA) program are allowable, however; CEs are responsible for ensuring that all costs are reasonable, necessary and allocable and these two types of contracts require CEs to commit to buying products that may or may not actually be produced. Therefore before entering into such a contract the CE must give careful consideration and the potential risk weighed against the benefit.

Should the CE choose to retain the services of a contractor to perform one or more function, the CE is still required to retain final administrative and financial oversight and responsibility of the work performed by the contractor.

CEs may not contract out the management of the Program; however, they may subcontract some Program activities required in the management of the CACFP. Refer to Section 3000, Program Agreement for additional information.

Contact your Community Operations Field office or Education Service Center (ESC) for additional information and guidance.

7340.1 Vended Meals

A CE may contract with a vendor to provide meals to be used in its food service. TDA has developed a standard *Invitation for Bid and Contract for Purchased Meals* (IFB) that must be used for purchased meal procurements and contracts, regardless of the amount of the contract. The term of the contract cannot exceed 12 months. See below for contract renewal options.

The IFB can be found at <http://www.squaremeals.org>, under CACFP Administration and Forms, under Form Number "IFB." The CE must submit the contract (including those procured by sponsored sites) to TDA for review and approval before it is signed. Contact your Community Operations Field office or ESC for questions regarding the procurement process.

It should be noted that the procurement process for purchased meals can take up to six months, so CEs should plan accordingly to ensure a plan for preparation of meals is in place during the process.

NOTE: To request an exception to using the IFB contact your Community Operations Field office.

CEs that have existing contracts for vended meals at the time they apply for participation, can continue under their existing contracts, including renewals, with the following exceptions:

- The scope and purpose of the existing contract has changed. The CE or sponsored site will be required to re-procure using the *Invitation for Bid and Contract for Purchased Meals*.
- The existing contract does not meet the requirements and guidelines and is therefore unallowable. The existing contract would need to be terminated and re-procured using the TDA IFB.

CEs that contract with franchise restaurants for meals must ensure that procurement procedures are followed including ensuring competition and use of the TDA IFB.

Contract Renewal Options

CEs may renew an existing FSMC/vendor contract during each of the four consecutive years following the base year (procurement year) of the contract, if the scope and purpose of the contract does not change.

Examples of changes that would affect the original scope and purpose of an existing contract include:

- The addition of new services, such as providing catering or vended meals to sites not under the sponsorship of the CE, concessions, or vending machines;
- Adding participation in another TDA-administered program;
- Changes in fees or the basis for fee increases not reflected in the original *Invitation for Bid and Contract for Purchased Meals*;
- A major shift in responsibilities for the CE, sponsored site or the FSMC/vendor staff; or
- Changes to the formula that is used to identify a meal.

CEs must follow established procurement procedures when obtaining a FSMC/vendor contract for the base year. The contract period may only be effective for a maximum of one year to end September 30 each year. The contract can then be renewed each of the four consecutive years following the base year without going through the procurement process if the scope and purpose has not changed. After the base year and four renewal years have passed, the CE or sponsored site must go through the procurement process using the procurement method appropriate to their needs when obtaining a contract for purchased meals.

NOTE: The base year coincides with the Program Year, October 1 through September 30. In the CACFP, the first base year available for establishing the procurement year began with Program Year 2002 (October 2001 through September 2002).

7340.2 Contract Provisions

In order to subcontract specific CACFP activities, the CE must ensure that the:

- Services to be performed by the contractor are required in the administration/management of the CACFP;
- Services have been properly procured according to Program procurement guidelines;
- Terms of the agreement are adequate for the services to be performed;
- Costs are reasonable in relation to the services to be performed; and
- Costs are not contingent on the CE's receipt of reimbursement.

Written agreements must be established with a contractor if the activities to be performed by the contractor are directly related to the CACFP. The written agreement must at a minimum:

- Identify the person(s) or party(ies) that will perform the subcontracted activities including any assumed names;
- Certify that the contractor, nor any of its staff, are included on the National Disqualified List (NDL) or the Texas Excluded SFSP List (TEXSL);
- Identify the specific activities that the contractor will be performing (i.e., Scope of Work);
- State that the CE (not the contractor) accepts "final administrative and financial responsibility for the operation of the CACFP";
- Stipulate the requirement of the contractor to protect confidential information;
- Provide addresses, including mailing and street addresses for both parties;
- Designate who will receive any formal notices and the acceptable manner for the delivery of such notice;
- Include the contract term (i.e., the duration of the contract);
- Include a contract renewal clause, if applicable;
- Specify conditions for requesting and receiving approval for any price increases, if applicable;
- Specify the total cost not to exceed a definite amount;

- Include specifications regarding the rate of progress of the work and the acceptable fulfillment of the service;
- Specify payment terms;
- Provide a dispute resolution process;
- Outline the responsibilities of both parties;
- Include terms for abandonment or default (i.e., if the contractor defaults on the contract, the CE reserves the right to terminate the contract), including sanctions and penalties as appropriate; and
- Specify conditions for termination including:
 - Termination for Convenience - The CE reserves the right to terminate the contract at any time for convenience, in whole or in part, by providing thirty (30) calendar days advance written notice of intent to terminate.
 - Termination for Cause - The CE reserves the right to terminate the contract for cause if the contractor fails to perform in full compliance with the contract requirements, through no fault of the CE, by providing thirty (30) calendar days advance written notice of intent to terminate.

If applicable, contracts must include:

- The equal opportunity clause provided under 41 CFR 60-1.4(b); and
- A provision for compliance with the Davis-Bacon Act provided under 40 U.S.C. 3141-3144 and 3146-3148; and
- A provision for compliance with the Contract Work Hours and Safety Standards Act at 40 U.S.C. 3701-3708, for awards in excess of \$100,000; and
- The *Certification Regarding Federal Lobbying* (H2049), for contract in excess of \$100,000.

Contracts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

Additionally, the CE must obtain:

1. A debarment certification from the contractor in one of the following manners:
 - 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 application 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 application 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* 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/portal/SAM/#1>.

2. Certification Regarding Federal Lobbying (H2049) for any subcontract of \$100,000 or more.

CEs should also include any other factors, in both the solicitation and the resulting contract, that affect the bidder such as a provision which allows for individual competitive procurement of similar items during peak seasons, etc.

For additional guidance on contract provisions refer to 2 CFR 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* located at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

7340.3 Compensation for Purchased Services

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

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

7340.4 Contract Duration and Renewal Options

The term of contracts cannot exceed 12 months and can include a provision for up to four renewals in the four consecutive years following the initial year (procurement year) of the contract, if the scope and purpose of the contract has not changed.

Prior to renewing a contract the CE or sponsored site must evaluate the terms and determine if conditions or circumstances have changed that would require re-procurement.

Some examples of changes that would affect the original scope and purpose include, but are not limited to:

- The addition of new services;
- Adding participation in another program;
- Adding sites not originally included in the procurement;
- Other changes that would materially affect the contract.

7350 Documentation and Contract Record Keeping Requirements

Procurement documentation and contract records are subject to the same record keeping requirements as all other CACFP related records (Refer to Item 4400, *Program Documentation*, for additional guidance).

When a contract is continued or renewed annually or recorded at other intervals, the retention period for the records of the contract period starts on the date the final payment is recorded in connection with the final renewal of the contract and not the initial contract execution date. The three-year record retention period does not begin until the final contract renewal period has expired and/or the final payment is recorded, whichever occurs first.

Actions such as bid protest, litigation, and audits may result in an extension of the three year record retention period. In such cases, the records must be retained until the completion of the action and resolution of all issues arising from it, or the expiration of the regular three year period, whichever occurs latest.

Examples of such records are:

- A written rationale for the method of procurement
 - Procurement procedures
 - Justification for use of a method that does not follow the CE's written procedures
- A copy of the Request for Proposal or the Invitation for Bid
- The bidding and negotiation history
- The basis for contractor selection
 - Criteria used
 - Evaluation documentation
- Including justification for selection of a contractor that was not the lowest bidder and copy of TDA approval of selection, if applicable
- Approval from TDA to support a lack of competition when competitive bids or offers are not obtained
- The terms and conditions of the contract
- Any changes to the contract and negotiation history
- Billing and payment records
 - Invoices
 - Receipts
- Handwritten receipts, such as those from Farmers' Markets are acceptable as long as they include the date of purchase, name of vendor/farmer, item cost, amount, and total cost
- A history of any contractor claims
- A history of any contractor breaches

If procurement records generated during the performance of the contract award do not demonstrate compliance with applicable procurement requirements, the following penalties may occur:

- Disallowance of costs.
- Termination of contract.
- Request CE, or sponsored site, to issue a “stop work” order.
- Placement into the serious deficiency process.
- Other actions deemed appropriate.

For additional guidance and answers to commonly asked questions reference Section 12000, *Frequently Asked Questions*.

7400 Nonprofit Food Service

The information provided throughout this item comes from 2 Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 48 CFR Part 31, *Contract Cost Principles and Procedures*, 7 CFR Part 226, *Child and Adult Care Food Program* and FNS Instruction 796-2, *Financial Management – CACFP* and is not all inclusive of all information contained in those documents. CEs are responsible for understanding and complying with the above mentioned guidance.

CEs must operate a nonprofit food service principally for the benefit of enrolled participants and must document all aspects of the food service operation. Sponsors must ensure their sites operate a nonprofit food service.

Determining nonprofit food service status

Nonprofit status does not require that the CE operate at a break-even or loss. Nonprofit food service status is determined by the scope of the food service activities and the use of nonprofit food service revenues through:

1. Identifying all nonprofit food service revenues,
2. Deducting allowable net expenses,
3. Identifying the excess of all nonprofit food service revenues over nonprofit food service expenses, and
4. Verifying that any excess of revenues over expenses is retained and used only in the nonprofit food service operation.

Food service revenue includes:

- CACFP reimbursement.
- Income to the Program, such as:
 - Funding from other government sources
 - Cash donations specifically given for food service
 - Grants from other organizations or individuals
 - All interest earned on CACFP reimbursements or advances
- All other funds used or restricted for use in the nonprofit food service.

Excess funds

CEs can maintain a maximum of three months' average expenditures in the nonprofit food service account. The nonprofit food service account, or net cash resources, should not exceed three months' average expenditures. If a CE approaches the maximum amount allowed in the nonprofit food service account, it should contact TDA for assistance.

To determine if an excess balance exists, complete the following calculations:

A. Total Net Cash Resources	B. Prior Year's Expenditures
\$ _____	\$ _____
Number of months' operation prior year x 3 months	

If A exceeds B the CE must develop a plan to reduce the excess balance.

CEs must account for all nonprofit food service costs using generally accepted accounting principles (GAAP). CE's are responsible for accounting for costs accurately and for maintaining records to demonstrate that costs claimed have been paid, are allowable to the program, and comply with financial management requirements found in FNS Instruction 796-2, *Financial Management – CACFP* located at <http://www.squaremeals.org>, under:

- CACFP Administration & Forms;
- CACFP Policy & Handbook; and
- F&N Resources, tools and links.

In all cases, allowable costs must be prior approved. Levels of required approval, such as specific prior written approval and USDA Food and Nutrition Service (FNS) approval are described in the FNS Instruction 796-2, *Financial Management – CACFP* as well as the Budget and its instructions.

Costs that require TDA specific prior written approval or FNS Regional Office approval must be submitted in writing for approval prior to the CE incurring the cost or including the cost in its budget.

To request specific prior written approval or FNS Regional Office approval submit the request, with all supporting documentation to justify the cost, to TDA using one of the following methods:

- TX-UNPS upload feature through checklist items; or
- Fax at (888) 223-8645; or
- Email to: CACFP.Bops@TexasAgriculture.gov; or
- Regular or certified mail, Attn: CACFP Applications, to:
1700 North Congress Avenue
Austin, Texas 78701
- Overnight delivery, Attn: CACFP Applications, to:
P.O. Box 12847
Austin, Texas 78711

Regardless of the method of submission ensure the name and CE ID is included.

Allowable costs

A cost may be allowable in the CACFP if it is determined to be necessary and reasonable.

Necessary costs are those that represent an activity or function that is generally recognized as reasonable and necessary for the operation of the Program. The cost must be essential to fulfill the regulatory requirements for proper and efficient administration of the Program.

Reasonable costs are those that represent an amount that does not exceed what a prudent person would pay under the same circumstances.

Allowable costs can be either direct or indirect costs. Direct costs are those costs that can be specifically identified as costs for the nonprofit food service. Indirect costs are those costs that are incurred for a common purpose within the organization, but a portion cannot be easily assigned to the nonprofit food service. If the CE will be claiming indirect costs, the rate must be part of their cost allocation plan. A cost allocation plan is a written explanation of how costs are classified.

Unallowable costs

Unallowable costs may be expressly unallowable, directly associated with expressly unallowable costs, or may be unallowable through the actions or inactions of the CE.

- Expressly unallowable costs are those that are prohibited by FNS Instruction 796-2, applicable laws or regulations.

- Directly associated unallowable costs are the costs that result from the CE incurring expressly unallowable costs, such as the cost of supplies used by a CE engaging in prohibited lobbying activities.
- Costs made unallowable by the action or inaction of the CE include costs that might otherwise be allowable, such as approved labor costs for which the CE failed to maintain the required documentation to support the costs.

Budgeting

For budgeting purposes, the cost of an expense may be estimated; however, the nonprofit food service accounting system and the CE's supporting documentation must show only actual costs. In addition, costs must be necessary and reasonable to the operation of the nonprofit food service.

Budgeted costs are separated by "operating costs" and "administrative costs".

TDA must approve a CE's administrative and operating costs, including labor costs, in order for the CE to use CACFP reimbursements and income for those costs.

The *Budget* contains the following cost categories:

NOTE: The information below only includes those cost categories from FNS Instruction 796-2, *Financial Management – CACFP* that are potentially allowable and not determined expressly unallowable by USDA. CEs are responsible for using the instruction and the CFR for any costs not discussed below to determine if those costs are unallowable.

Labor

This includes operational and administrative labor. See FNS Instruction 796-2, #23 for all the requirements for labor costs including allowable and unallowable costs, documentation requirements, and specific levels of approval. Labor costs include costs for employees. Labor costs for independent contractors would be entered in either purchased services or contracting organization costs (see Legal expenses and other professional services).

To determine whether the cost is for an employee or independent contractor visit the IRS website at <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee? ga=1.74484946.1747892112.1462550897>

Reminder: Purchased services/professional services (such as an independent contractor) must be properly procured.

Food

This includes the net cost of food used or the net cost of delivered meals, not the cost of all food purchased.

Facilities and Space

- Health and safety standards
 - The cost to meet regulatory Program requirements for inspections of at-risk afterschool care centers and outside school hours care centers. Costs to bring owned or rented spaces into compliance with other State and local requirements are unallowable.
- Rearrangement and alteration
 - The cost necessary for efficient and effective Program operation but do not result in capital improvements. See FNS Instruction 796-2, #17 (3).
 - This cost requires specific prior written approval.
- Rental costs
 - The cost of space used for Program purposes and that does not exceed the rental costs of comparable space and facilities for privately owned buildings in the same locality. Related party transactions are subject to additional cost limitations. See FNS Instruction 796-2, #36 d(3) for further information.
- Utilities
 - See Purchased services below.
- Other space costs
 - The cost of special lease arrangements, costs incurred during periods of non-occupancy; and a single base such as square footage to allocate maintenance and operation costs between Program and non-Program activities when these costs are not included in rent or other space charges. See FNS Instruction 796-2, #17 (d).
 - These costs require specific prior written approval.

Supplies and Equipment

- Materials and supplies
 - The cost of durable supplies (cell phones, etc.) and expendable materials and supplies (pens, paper, ink cartridges, etc.) which do not meet the definition of equipment.

- The cost of materials and supplies related to wellness efforts, including the promotion of physical activity and limiting the use of electronic media, may be an allowable cost if the CE or site has determined the free materials provided by USDA are not sufficient.
 - The materials developed must emphasize the link between nutritious meals and physical activity and/or limiting the use of electronic media and the costs for the materials must be reasonable, necessary and allocable as to their content in relationship to CACFP requirements. CEs must ensure the costs meet requirements of the FNS Instruction and the quality of the meal service is not jeopardized by using Program funds towards wellness efforts. Materials and supplies used by the CE and individuals for non-Program use purposes are unallowable.
- The cost of supplies, such as seeds, fertilizer, watering cans, rakes, etc., to grow food that will be used as part of a reimbursable meal and for nutritional education activities.
- Costs related to the purchase of potable water or water filtration equipment – see “other costs” for additional guidance.
- Rental costs
 - The cost of vehicles and equipment owned by a third party or parties that are leased by the CE for Program purposes when properly procured and a bona fide arms-length written rental agreement exists. Related party transactions and other factors are subject to additional requirements and cost limitations. See FNS Instruction 796-2, #36 for further information.

Purchased Services

- The cost of services, excluding professional services, required for Program purposes and not included in other cost categories, such as maintenance, repair or upkeep of food service equipment that neither adds to its permanent value or prolongs its expected useful life but keeps it in an efficient operating condition, provided the cost was incurred in arms-length transactions, costs of utilities, purchased security and janitorial services, etc. not included in labor and with specific prior written approval, the cost of all services obtained through less-than-arms-length transactions, maintenance and service repair contracts on Program equipment and all other purchased service costs needed for Program operations.

NOTE: Costs that prolong expected useful life of equipment or facilities, any share of purchased service costs incurred for non-Program purposes and less-than-arms-length transactions that are not fully disclosed are unallowable.

Financial Costs

- Accounting costs
 - The cost of establishing and maintaining accounting and other information systems required for the management of this Program. Costs incurred to meet or maintain the organization's incorporation or nonprofit status is unallowable.
- Bonding costs
 - The cost of the Performance bond required by TDA for new sponsoring organizations and the cost of premiums of bonds covering employees that handle Program funds. The cost of bonding for general administrative staff, officers or individuals not responsible for handling Program funds is unallowable.
- Other financial costs
 - The cost of bank service fees for Program accounts including the Program share of fees for commingled accounts, for check printing and routine account servicing charges.
 - With specific prior written approval, stop payment charges for site advance and reimbursement payments and other disbursements; Program account reconciliation and analysis fees, including the allocated share for commingled accounts; interest incurred on organizational debt used to acquire or replace equipment or other property or make allowable improvements. See FNS Instruction 796-2 #22 for more information and the list of unallowable financial costs.

Media Costs

- Advertising and public relations costs
 - The cost of advertising media to solicit bids for (1) the procurement of Program goods and services; (2) recruitment of personnel for the Program; (3) disposal of scrap or surplus materials acquired in the performance of the Program; and with prior written approval the advertising and public relations costs for pamphlets, news releases and other information services to (a) inform individuals, groups or the general public about the CACFP; or (b) increase a CE's CACFP participation. The costs of fundraising for the purpose of meeting Program objectives are allowable with FNS Regional Office approval. Advertising and public relations costs to advertise or solicit non-Program related business is unallowable.

- Communications
 - The cost of supplies, equipment and services used for Program operations, such as cellular phone, data plans, mobile hotspots, air cards, and internet charges. All costs in this category require specific prior written approval. Supplies, equipment and services that are transferred to or owned by officers, trustees, directors, consultants or employees and supplies and services used for non-Program purposes regardless of ownership are unallowable.

- Publication, printing and reproduction
 - The cost for in-house and outside publication and printing not included in other cost categories, such as publication, printing and reproduction of materials related solely to the Program or the allocable share of direct costs when both Program and non-Program purposes are benefited.
 - The cost of publication, printing and reproduction of materials related to wellness efforts, including the promotion of physical activity and limiting the use of electronic media may be an allowable cost, if the CE or site has determined the free materials provided by USDA are not sufficient and as long as the materials develops emphasize the link between nutritious meals and physical activity and/or limiting the use of electronic media; and the costs for the materials are reasonable, necessary and allocable as to their content in relationship to CACFP requirements. CEs must ensure the costs meet requirements of the FNS Instruction and the quality of the meal service is not jeopardized by using Program funds towards wellness efforts.
 - Publication, printing and reproduction costs included in other cost categories and costs for non-Program related purposes are unallowable.

Contracting Organization Costs

- Administrative appeal costs
 - The cost for appeals pursuant to the CACFP regulations and include, in-house or properly procured private counsel; professional services such as an accountant or consultant, administrative or clerical services; and costs of directly related services provided by the CE's employees, officers and trustees not otherwise claimed as labor. Costs for civil, legal or other proceedings are unallowable, including the costs of pursuing a judicial review of a decision rendered by a hearing official in a CACFP hearing.

- Legal expenses and other professional services
 - The sponsoring organization's cost to pursue administrative or judicial recovery of funds due from sponsored sites when the costs are reasonable in relation to (a) the amount of funds due; and (b) the amount of the funds that can reasonably be expected to be recovered.

- The CE's cost for services performed by individuals who are not officers, employees or members of the CE when (a) the services are required in the administration of the Program; (b) the costs are reasonable in relation to the services provided; (c) the services have been properly procured; (d) the terms of the contractual arrangement are adequate for the services required; and (e) the costs are not contingent upon recovery of Program funds. The costs to maintain legal staff to discharge general responsibilities, and the costs incurred in connection with organization and reorganization are unallowable.
- The cost of water testing services - see "other costs" for additional guidance.
- These costs require specific prior written approval.

- Meetings and conferences
 - The cost for travel and registration fees to attend CACFP Federal, State, local, national or regional conferences. Travel and registration fees to attend meetings or conferences for which CACFP is only a portion of a larger child and adult care related agenda require specific prior written approval. Travel for meetings and conferences, hosting meetings and conferences are unallowable.

- Membership, subscriptions, and professional organization activities
 - The cost for membership is civic, business, technical and professional organizations and subscriptions to professional and technical periodicals related to the Program.
 - With specific prior written approval of Food and Nutrition Service Regional Office (FNSRO), the cost public or nonprofit organizations memberships in civic or community organizations.
 - With specific prior written approval, membership in discount warehouse buying clubs when the membership will be used strictly for the CE and will save the Program money.
 - Costs of individual memberships in professional organizations, for-profit organizations memberships in civic or community organizations, all other costs of membership in allowable organizations and individual or personal subscriptions are unallowable.

- Participant training and other participant support costs
 - The cost of training, including materials and supplies, meals, lodging, travel, speaker fees, child care services, substitute employees to cover Program duties for employees required to attend training. These costs can be operating or administrative, reference FNS Instruction 796-2 #30 for specifics. The cost of training on wellness efforts, including the promotion of physical activity and limiting the use of electronic media may be an allowable meeting and conference cost.

- CEs must ensure the costs meet requirements of the FNS Instruction and the quality of the meal service is not jeopardized by using Program funds towards wellness efforts. Motivational speakers, social events, entertainment, flowers, etc. are unallowable.
- Travel
 - The cost of Program travel. Reference FNS Instruction 796-2, #39 for the various allowable forms of travel costs, including those that are unallowable.

Unaffiliated Facility Costs (Sponsoring Organizations Only)

This includes the total anticipated annual CACFP reimbursement that will be earned by unaffiliated sites.

Other Costs

This includes any other costs associated with the nonprofit food service, including indirect costs.

- Contribution and donation costs
 - The cost required to make goods or services donated to the institution usable for the Program. Cash and the value of noncash contributions and donations made by the CE to others are unallowable.
 - These costs require specific prior written approval.
- Criminal and civil proceedings, claims, and appeals
 - This does not include administrative appeal costs as detailed above. See FNS Instruction 796-2, #11 for specifics related to these costs.
 - These costs require FNSRO approval.
- Employee Morale, Health, and Welfare Costs and Credits
 - These costs may be allowable when not included in labor costs as part of the organization's written compensation policy. See FNS Instruction 796-2, # 14 for specifics related to these costs.
 - These costs require specific prior written approval.

- Insurance
 - The cost of
 - (1) insurance required by TDA (currently TDA does not have any insurance requirements),
 - (2) with specific prior written approval
 - (a) cost of other insurance maintained by the CE in connection with the general activities of the Program;
 - (b) cost of insurance or contributions to any self-insurance reserve covering the risk, loss or damage to Federal Government property to the extent that the CE is liable for such loss or damage;
 - (c) cost of insuring the lives of Directors and officers provided that (i) the insurance policy actually provides liability coverage related to the CACFP; and (ii) if the insurance policy also provides coverage for non-CACFP liability, the CACFP share of the cost is properly allocated;
 - (d) contributions to a reserve for self-insurance to the extent that the reserve meets State insurance requirements and the type of coverage, extent of coverage and the rates and premiums would have been allowed had insurance been purchased from a commercial provider to cover the risks.
 - Insurance costs for non-Program activities and the cost of actual losses that could have been covered by permissible insurance through the purchase of insurance or an approved self-insurance plan are unallowable.
- Lobbying and Advocacy Costs
 - The cost of
 - (1) responding to a documented request made by a member of Congress or the State legislature, a legislative body or subdivision or a cognizant staff member thereof for a technical or factual presentation of information on a topic directly related to the performance of the Program;
 - (2) travel lodging and meal costs for individuals offering testimony at a regularly scheduled congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing;
 - (3) lobbying to influence State legislation that would directly reduce the CE's Program costs or avoid a material impairment of the CE's authority or ability to fulfill Program requirements; and
 - (4) legislative liaison activities when the activities are not carried on or in support of, or in preparation for prohibited lobbying activities.
 - See FNS Instruction 796-2, #25 for the list of unallowable costs as well as disclosure requirements.

- Management Studies
 - The cost of studies directly related to the Program that is performed by entities other than the CE itself. Costs for studies conducted by the organization’s officers, employees, or family member, thereof and the cost of studies for non-Program purposes are unallowable.
 - These costs require specific prior written approval.

- Proposal costs
 - The cost of preparing proposal submissions for FNS Child Nutrition Program grants or projects. The cost of preparing applications in other FNS Programs or preparing all other grant applications and proposals is unallowable.
 - These costs require specific prior written approval.

- Records retention
 - The cost for supplies, storage and maintenance of records necessary for Program administration.

- Taxes
 - The cost of taxes or payments in lieu of taxes that the CE is legally required to pay as a result of operating the Program. Refer to FNS Instruction 796-2, #37 for the list of unallowable taxes.

- Water
 - The purchase of potable water, water testing or equipment to filter water may be allowable costs to ensure potable water is available to Program participants. A requesting CE must submit documentation to demonstrate that a) it has sufficient funds, b) it is lacking in capital improvement funding, and c) the expense is necessary to carry out the mission of the Program.

7410 Operating Costs

Operating costs are allowable expenses for serving meals to eligible participants in eligible sites.

Examples of operating costs include:

- Food;
- Food service labor;
- Nonfood supplies; and
- Food service equipment.

All CEs (sponsors and independent) must compute the cost of food used in the nonprofit food service. FNS Instruction 796-2, *Financial Management – Child and Adult Care Food Program* Exhibit B provides guidance on computing the cost of food, food inventory and food purchases.

7420 Administrative Costs

Administrative costs are limited to the organization's allowable expenses for planning, organizing, and managing the Program.

Examples of administrative costs include salaries, wages, fringe benefits, etc. to accomplish the following:

- Reviewing and submitting site applications to TDA for Program participation approval;
- Reviewing and approving *CACFP Meal Benefit Income Eligibility Forms*;
- Providing training for CE staff and sponsored sites; and
- Conducting monitoring visits to sponsored sites.

7430 Income to the Program

All income to the Program must be retained and used only in the Program food service.

There are two types of income to the Program: Program income and other income.

Program income is the gross income earned from activities supported by the Program, and includes, but is not limited to:

- Participants' payments for meals in contracting entities which operate pricing Programs.
- Payments received from food sales to adults when the cost of the adult meal is not deducted from total operating costs.
- Proceeds from the disposition of real and nonexpendable personal property acquired with Program funds.
- Royalties and other income earned from the sale or licensing of copyrighted work developed under the Program.

Other income includes other funds that result from Program operations or are applied to Program operations. Examples include:

- Cash donations specifically earmarked for use in the Program food service.
- Interest earned on advance administrative or meals service funds and site pass through funds that can be retained by the CE.
- Funds received from the sale of unused or unneeded supplies purchased with Program funds.
- Revenue from the sale of food grown in the CE's CACFP funded garden.

Income to the program may not be used to pay unallowable costs in the CACFP. For example:

- Incentives and bonuses provided to sites to participate in the program.
- Training related to, but not required for program participation, such as training to maintain licensing/certification requirements.

The receipt of all funds related to the CACFP, including grants, donations, and loans, regardless of their source, must be documented in writing.

All loans must satisfy TDA financial management system requirements including, but not limited to, the following criteria:

- A written agreement specifying the terms and conditions of the loan, including a repayment schedule, must be signed by both parties.
- Loans may not be entered into retroactively.

EXAMPLE: A donation or grant may not be converted to a loan agreement after the fact.

- Interest accrued on the loan is not an allowable program cost.

7440 Depreciation and Direct Expensing

Depreciation

Depreciation is the allocation of the cost of acquiring or materially improving a capital asset, to all accounting periods (fiscal years) whose Program operations benefit from the CE's use of the asset. Capital assets include tangible property such as buildings, furniture, motor vehicles, and other equipment; and certain intangible property such as computer software. Land is a capital asset but can **never** be depreciated.

Depreciation is based on the asset's acquisition cost, expected useful life, the costs of improvements or alterations that materially increase the value or prolong its useful life, and the asset's depreciable cost.

Whether privately or publicly owned, buildings can be depreciated using 30-year straight-line, or the depreciation method used and accepted for federal income tax reporting purposes. In addition, the acquisition cost upon which depreciation is based must exclude the value of land. Any other depreciation method requires specific prior written approval from TDA.

The organization may use either 15-year straight-line depreciation (five years for ADP equipment and vehicles) or the depreciation method used and accepted for federal income tax reporting purposes. Any other depreciation methods require specific prior written approval.

All depreciation charged to the program must be documented through depreciation records indicating the amount of depreciation taken each period and, when appropriate, prorated between program and non-program use.

Direct Expensing

Direct expensing means charging a capital expenditure as a direct cost to the CE's nonprofit food service account at the time the items are purchased or improvements are made. Direct expensing requires specific prior written approval.

See FNS Instruction 796-2, #13 & 16 for specifics related to these costs, including documentation requirements and unallowable costs.

7450 Donations

Donations, such as food, building use, services, and labor are not considered Program income.

However, a CE must maintain and make available documentation of each donation to demonstrate how it manages the Program on the CACFP reimbursement. CEs that submit a budget that does not reflect an acceptable level of food costs to support the number and type of meals it intends to claim should submit this documentation with the application to explain the discrepancy.

7460 Net Costs

Net costs are a CE's total operating costs minus income to the program. A CE's CACFP reimbursement may not exceed its net costs.

EXAMPLE: A CE's reimbursement is \$10,000 per year. Records support costs of \$11,000 with \$1,000 income. Since the net costs (\$11,000 - \$1000) and CACFP payments are the same, the CE has shown that the program is nonprofit.

TDA is able to observe a CE's daily operation of the CACFP only in the course of administrative reviews and audits. Therefore, TDA must rely on the records a CE keeps to determine compliance with CACFP standards and the amount of reimbursement to which the CE is entitled.

If a CE's records do not support its eligibility or the eligibility of its sites or claims for reimbursement, the CE will be required to repay any amounts paid improperly.

7470 Documentation Requirements

CEs and sites must keep records of costs to show that the food service is nonprofit.

Documentation requirements when including costs in the budget vary depending on the cost category. CEs and sites must reference FNS Instruction 796-2 for specific documentation requirements when requesting budget approval.

Examples of required documentation include:

Food cost records

- Procurement documents, including bids and contracts;
- Purchase orders;
- Delivery receipts;
- Receipts
 - Handwritten receipts, such as those from Farmers' Markets are acceptable as long as they include the date of purchase, name of vendor/farmer, item cost, amount, and total cost
- Invoices;
- Canceled checks;
- Itemized cash receipts;
- Purchase records;
- Credits, returns, and rebates; and
- Inventory records.

If a CE or site purchases prepared meals from a vendor, such as a food service management company, the CE or site must keep delivery slips from each delivery. The CE or site must verify the count and counter-sign the delivery notice.

Documentation requirements for labor costs include:

- An established and maintained written compensation policy for every element of compensation charged to the nonprofit food service. At a minimum, the written compensation policy must identify: (a) rates of pay; (b) hours of work, including breaks and meal periods; and (c) the organization's policy and payment schedule for regular compensation, overtime, compensatory time, holiday pay, benefits, awards, severance pay, and payroll tax withholding. The written compensation policy and approved budget must be in agreement for labor costs to be allowable.

- Time and attendance reports for all labor costs. These reports must identify the total time actually worked by the employee and not just the time spent on nonprofit food service activities. At a minimum, these reports must include (a) start time; (b) end time; and (c) absences.
- Time distribution reports if the employee works on more than one Federal award, a Federal award and non-Federal award, an indirect cost activity and a direct cost activity, two or more indirect cost activities which are allocated using different allocation bases, or an unallowable activity and a direct or indirect cost activity. To establish the portion of costs that may be claimed as labor, a daily log or time distribution method must be used. Time distribution reports must be:
 - Completed by employee and accounts for the total activity for which the employee is compensated;
 - Prorated by the amount of time spent on nonprofit food service activities;
 - Completed for each employee separately;
 - An after-the-fact determination of the actual activity of each employee; and
 - In intervals no less than every 15 minutes.
 - In addition, the report for proprietary and nonprofit organizations must be compiled at least monthly and coincide with one or more pay periods. For public organization employees who work only in the nonprofit food service, certifications completed at least every six months can be substituted for time distribution reports. Budget estimates and time studies of any kind are not acceptable documentation.
- In all cases, time and attendance and time distribution reports must be completed by the employee and signed and certified as true and correct by the employee and a responsible supervisor.
- Payroll records. At a minimum, a record for each employee containing:
 - Employee name;
 - Employee identification number;
 - Rate of pay;
 - Hours worked;
 - Benefits earned;
 - Any reductions or increases to the employee's base compensation, e.g., overtime pay, incentive award, etc.;
 - Gross pay;
 - Net pay;
 - Date of payment to employee;
 - Method of payment, i.e., check, cash, Electronic Funds Transfer (EFT); and
 - Verification that the employee has been paid, i.e., canceled checks or EFT deposit verification. For cash payments, an original signature certifying receipt of payment is required.

Documentation of mileage expenses include records of:

- 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.

CEs may develop their own travel form containing these elements.

Documentation of donations must include, at a minimum, (1) date of donation; (2) description of donation (i.e., non-fat milk); (3) amount of donation (i.e., gallon, half-gallon, pints).