

PROCUREMENT UNDER THE NEW TDA GUIDELINES:

What You Need to Know for 2025

TDA: Administrator's Reference Manual (ARM)



Section 17

Procurement

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Section 17: Procurement

This procurement guidance is intended to assist contracting entities (CEs) in establishing effective and compliant procurement practices that ensure full and open competition (also called free and open competition) for the purchase of products and/or services.



Procurement Purchasing Methods



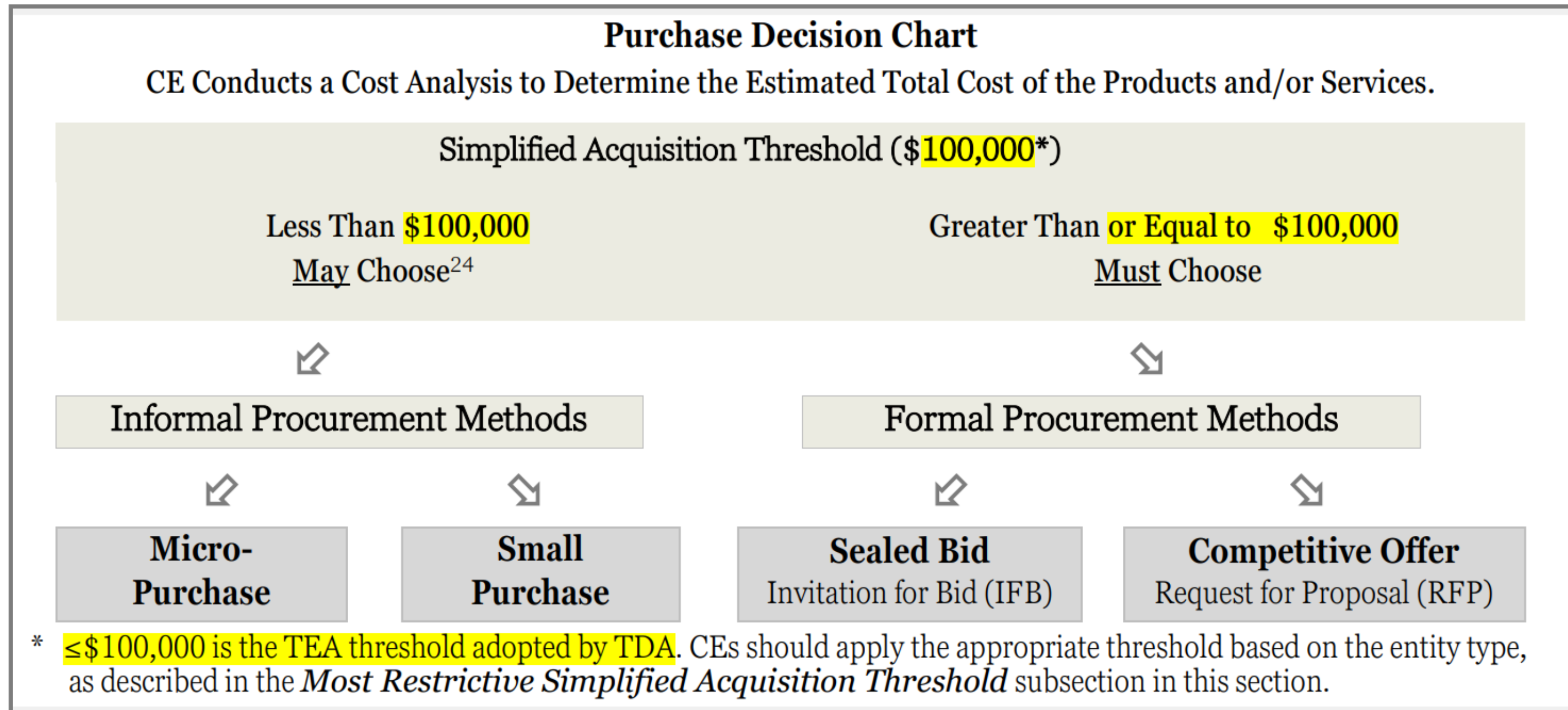
There are two types of procurement methods that CEs may use—formal and informal. The decision to use formal or informal is based on the total estimated cost of the purchase and whether the cost of the total purchase does or does not exceed the simplified acquisition threshold (small purchase threshold).

Governmental, regulated by the Texas Education Agency (TEA)—These CEs, such as independent school districts (ISDs) and charter schools, must use the simplified acquisition threshold established by TEA.

As of September 1, 2025, the simplified acquisition threshold for public school districts and charter schools regulated by TEA is less than **\$100,000. Less than \$100,000 means equal to or less than \$99,999.99.**

CEs should verify that their simplified acquisition threshold amount has not changed since the date this section was released. CEs may also be subject to a lower simplified acquisition threshold based on local or other applicable state regulations.

Example of a Purchase Decision Chart



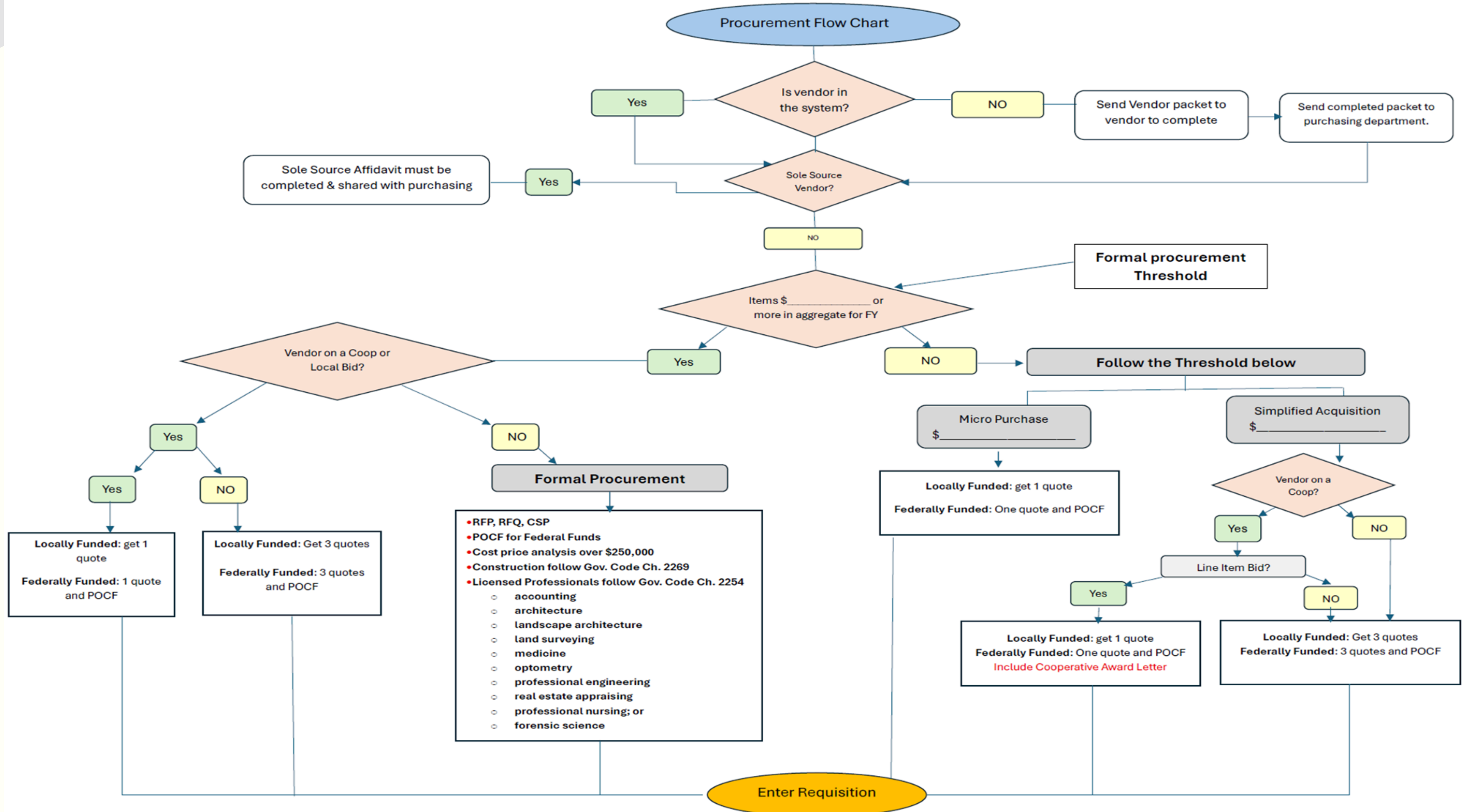
Local Considerations



- Board policy threshold revisions:
 - CH(LOCAL) - Purchasing and Acquisition
 - CV(LOCAL) - Facilities Construction
- Local Purchasing Policies and Procedures
- State / Federal Policies and Procedures Manual



Sample Procurement Threshold Flowchart



Small Purchase Method



A small purchase is appropriate when the products and/or services have a total cost equal to or less than the simplified acquisition threshold. **The small purchase method results in a contract between the CE and the contractor.**

Purchase amount. Total cost of all products and services in a single procurement transaction. For small purchases, the purchase amount **must be less than \$100,000.**

For Example: The CE procured \$13,278.28 in fresh fruit and vegetables from a local vendor. The fruit and vegetables were procured, ordered, and delivered all at one time with a single invoice. The total cost for this small purchase is \$13,278.28.

Awarding the Contract: Evaluation of the Bid and Award of Contract



Responsive Contractors When a CE is evaluating the documentation submitted by an offeror, the CE must only consider **offers** that are specifically responsive to the technical requirements presented in the solicitation.

Contractor provided incentives (bonuses, stamps, equipment, or other benefits) that will be received by the CE, the school nutrition program, or enrolled students that may influence the contract award must be treated the same as a gratuity, favor, or anything of monetary value given to a school nutrition program employee, officer, or agent of the CE—these types of incentives may create a conflict of interest. **Offers including these kinds of nonresponsive or overly responsive incentives must be excluded from consideration.**

Nonresponsive or Overly Responsive Offers



If an offeror does not submit an offer that is responsive to the specifications and/or technical requirements described in the solicitation, the offer is considered nonresponsive or overly responsive **and the offeror must be disqualified.**

Any extra products and/or services not described in the solicitation that are included in the offer are nonresponsive or overly responsive.

Extra products and/or services include, but are not limited to, the following:

- Additional equipment
- Prizes
- Stamps that can be used to obtain another item or service
- Scholarships

The CE cannot award the contract to a nonresponsive or overly responsive offer.



Section 17a: Procurement Procedures

The guidance in this section is intended to assist contracting entities (CEs) in (1) establishing effective procurement procedures for purchasing products and/or services and for managing contracts and agreements and (2) ensuring that all contracts and agreements are operated according to the applicable procurement regulations and guidance.

Written Procurement Procedures



Small Purchase – Strategies for identifying possible suppliers and obtaining quotes from at **least two** potential suppliers.

Competitive Purchasing. When a CE uses the small purchase method, the CE must obtain price quotes from at least two responsible and responsive contractors. Obtaining three price quotes is recommended. (Section 17, Procurement | September 2, 2025 | Page 23 of 77)

“If only one quote is received, it is acceptable as long as the bid specifications did not limit fair and open competition.”

TDA School Call - September 24, 2025



Section 17b: BuyAmerican

The guidance in this section is intended to assist contracting entities (CEs) in implementing the Buy American provision in procurement activities.

The Buy American provision requires CEs and third parties, acting on behalf of CEs, to purchase domestically grown and processed food to the maximum extent practicable.

Buy American



The Buy American provision requires CEs and third parties, acting on behalf of CEs, to purchase domestically grown and processed food to the maximum extent practicable.

Per USDA guidance, this provision applies to all food purchases made with funds from the nonprofit food service account.

Therefore, this section applies to food purchased for the following programs:

- School Nutrition Programs (SNP)
 - National School Lunch Program (NSLP)
 - School Breakfast Program (SBP)
 - Afterschool Care Program (ASCP)
 - Fresh Fruit and Vegetable Program (FFVP)
 - Seamless Summer Option (SSO)
 - Special Milk Program (SMP)
- All CACFP programs administered by the CE, including CACFP At-Risk
- SFSP

All other foods purchased with funds from the nonprofit food service account

Buy American Checklist



Prior to July 1, 2025:

Districts were required to complete the Buy American Checklist solely for Non-Domestic Food Product Purchases

This checklist needed to be retained on file for any Administrative or Procurement Reviews

Beginning July 1, 2025:

The Buy American Checklist must now be completed for any items not listed in the Federal Acquisition Regulation's List of Domestically Nonavailable Articles

Furthermore, School Food Authorities (SFAs) are required to implement a Buy American Exceptions Tracking Tool to ensure that the 10% CAP on non-compliant items is not exceeded

Buy American Provisions Related to the Final Rule – CNP Meal Patterns Consistent with the 2020–25 DGAs



- On April 25, 2024, FNS published the final rule, Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans (89 FR 31962)
- Among other provisions, this rule finalizes regulations that strengthen the School Meal Programs' Buy American provision
- The Buy American provision requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products
- This provision supports the mission of the child nutrition programs, which is to serve children nutritious meals and support American agriculture. Program regulations that govern this provision apply to school food authorities that operate the National School Lunch* and/or School Breakfast Programs* and are found at 7 CFR 210.21(d) and 7 CFR 220.16(d), respectively.
- The final rule is effective on July 1, 2024; some provisions have phased-in implementation dates



Buy American Provisions Changes Related to the Final Rule



| Provision | Previous Requirement | Updated Requirement | Implementation Date |
|--|--|--|---------------------|
| Limited Exceptions to the Buy American Requirement | Through policy guidance, USDA detailed two limited exceptions for price and availability that school food authorities could use to purchase non- domestic items under the requirement that school food authorities purchase domestic products to the maximum extent practicable. | <p>USDA codified in regulations the two limited exceptions when non-domestic foods may be purchased by school food authorities. USDA also added to the first exception the option to use the <u>48 CFR 25.104 Nonavailable articles list</u>, as a list of excepted items.</p> <p>The final rule codifies the two limited exceptions as follows:</p> <ol style="list-style-type: none">1. The product is listed on the Federal Acquisitions Regulations Nonavailable articles list found at <u>48 CFR 25.104</u> and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or2. Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. | July 1, 2024 |
| Exception Documentation and Reporting Requirements | Through policy guidance, USDA instructed school food authorities to maintain documentation justifying the use of exceptions. | USDA codified in regulations the requirement for school food authorities to maintain documentation to demonstrate the use of exceptions. Items found on the Federal Acquisitions Regulations Nonavailable articles list are exempt from the documentation requirement, but these items must be counted toward the cap on non-domestic purchases when that goes into effect. | July 1, 2024 |
| Cap on Non- Domestic Food Purchases | USDA had not previously defined a dollar amount or threshold limiting commercial non- domestic food purchases. | <p>USDA established in regulations a new threshold for school food authorities that use exceptions. The limit on the percent of total commercial food costs from non- domestic foods will be phased in over 7 school years.</p> <p>Beginning in SY 2025-26, the non- domestic food purchases cap will be 10 percent. This phased-in approach will allow schools to gradually adjust to the new requirement and will allow USDA to continue to collect data on use of the Buy American exceptions. Items listed on the Federal Acquisitions Regulations Nonavailable articles list must be counted toward the cap on non-domestic purchases when it goes into effect.</p> | July 1, 2025 |

Exception Cap



Use of the Buy American exception is capped by a phased-in threshold starting in SY 2025- 2026

Non-domestic commercial food purchases cannot exceed the following annual cap, which is a percentage of total commercial food costs:

- Beginning July 1, 2025, the non-domestic commercial food purchase cap is 10%
- Beginning July 1, 2028, the non-domestic commercial food purchase cap is 8%
- Beginning July 1, 2031, the non-domestic commercial food purchase cap is 5%



Buy American Exception Accommodation



For SY 2025 – 2026, TDA has the authority to temporarily allow CEs to exceed the annual cap in limited circumstances by providing an accommodation while the CE is working towards compliance with the Buy American exception cap. The accommodation is only available if offered by TDA as corrective action based on an Administrative Review, and approval is at TDA's discretion. Accommodation approval is short-term as the intent is to temporarily allow the CE to exceed the threshold while working to come into compliance.

The accommodation form will be provided as part of technical assistance. The CAD will still require the SFA to outline how they will get in compliance with the CAP and how they will prevent this from reoccurring in the future.



Exceptions



The Buy American provision does not apply to spices!

The following items are exempt from documentation. However, will still count towards the 10% CAP.

- Bananas
- Coffee, raw or green bean
- Cashew nuts
- Grapefruit sections, canned.
- Oranges, mandarin, canned
- Pineapple, canned
- Yeast, active dry and instant active dry



**CLICK HERE FOR
THE FULL LIST OF
FAR NONAVAILABLE
ARTICLES**

Track Non-Domestic Purchases



All non-domestic food items, including substitutions and allowable exceptions, must be tracked for compliance with the 10% CAP.

School Food Authorities must develop a methodology to ensure compliance

USDA has developed a tracking tool to assist, but the use of this specific tracker is not required.

<https://www.fns.usda.gov/sites/default/files/resource-files/SP23-2024a.xlsx>



Minimum Requirements for Tracking



Product Description

What product was purchased that is documented on the invoice as non-domestic

Exception Type:

Exception A: Quantity and quality

Exception B: Cost

Total commercial food purchases

CNP-STC Recommendation: Include vendor name, manufacturer, and product number.



USDA Processed Food Items



TDA has been asked if the entire cost of a processed food item will be counted as a USDA Food and therefore not included as a commercial food purchased in the 10% CAP calculation.

Answer: TDA has asked USDA and are pending a response from the national office. However, we (TDA) believe the answer is likely to be that the whole product is considered a USDA food and therefore none of the associated expenditures are to be included in the CAP calculation.

CNP-STC Recommendation: On a separate Excel tab, track total case cost and the donated food value (NOI discount).



Section 17c: Cooperative Procurement

This procurement guidance is intended to assist contracting entities (CEs) in establishing effective and compliant procurement practices that ensure full and open competition (also called free and open competition) for the purchase of products and/or services.

GROUP PURCHASING ORGANIZATIONS (GPOs)



**NOT
ALLOWABLE**

Price – GPOs **do not** use price as the highest weighted criteria for awarding vendor contracts

Forecasting – GPOs **do not** use member provided forecasts in awarding vendor contracts

Vendors – GPOs may award multiple vendors under one item description

CO-OPERATIVES



ALLOWABLE

Price – Co-ops award line items based on price being the highest weighted criteria

Forecasting – Member forecasts used for purchasing

Cooperative Purchasing



The guidance in this section is intended to assist contracting entities (CEs) who participate in purchasing cooperatives that allow CEs to take advantage of economies of scale and reduce program costs.

The guidance in this section applies to the following school nutrition programs (SNPs):

- National School Lunch Program (NSLP)
 - Afterschool Care Program (ASCP)
 - Fresh Fruit and Vegetable Program (FFVP)
 - Seamless Summer Option (SSO)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

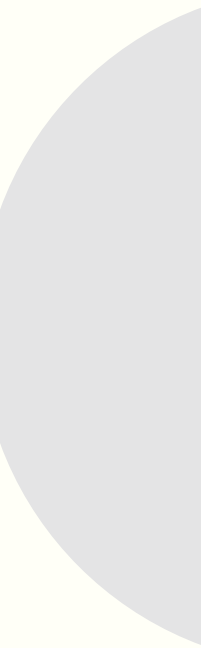
NSLP CEs that operate CACFP At-Risk and/or SFSP may use the NSLP procurement regulations instead of the CACFP and/or SFSP procurement regulations.

Type of Cooperatives



In procurement regulations, there are two types of cooperatives: (1) Operator-Only Cooperatives and **(2) Third-Party Cooperatives.**

A CE may belong to more than one cooperative. If the CE has membership in more than one cooperative, the CE must ensure that it establishes a protocol for the types of items or services to purchase from each cooperative, and that it does not contract for duplicative services. See the Individual CE Purchases through an Operator-Only Cooperative subsection in this section for additional guidance on this topic.



Type 2: Third-Party Cooperatives



Any type of cooperative agreement that is formed by sources that are external to CEs (i.e., not operator-only cooperatives) which includes the following types of cooperatives:

- Non-Child Nutrition Program State Agency Procurement Agency Agreements
- Interagency Agreements
- Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors (Collectively referred to as GPOs)

Formal Procurement Method:



- If the third-party cooperative follows USDA procurement regulations for formal method purchases, the CE may make purchases through the third-party cooperative without additional procurement actions. It is the CE's responsibility to retain documentation that demonstrates that the third-party cooperative follows USDA procurement regulations for products and/or services procured. The records may include, but are not limited to, the solicitation and contract, advertising documentation, and written procedures.
- If the third-party cooperative does not follow USDA procurement regulations, the CE may only consider it a source of information for a solicitation. The CE must still conduct a formal procurement that meets USDA procurement requirements. It is the CE's responsibility to retain documentation that demonstrates the CE's compliance with the required procurement process.

Procurement Processes



Micro-Purchase

- Allowable if purchase amount is equal to or less than micro-purchase threshold and micro-purchase requirements met.

Small Purchase

- May consider the price from a GPO as one source of pricing.

Formal Procurement

- SFA may only consider GPO as a source of information but not as a source of pricing



Section 27: Professional Standards

The continuing education and hiring standards for the National School Lunch Program (NSLP) and School Breakfast Program (SBP) aim to:

- Ensure personnel have adequate knowledge and training.
- Strengthen management and operational effectiveness.

Improve meal quality, reduce errors, and enhance program integrity.

Continuing Education/Training Professional Standards (Training Standards)



Procurement Training School nutrition program directors, management, and any staff who work on NSLP procurement activities must complete procurement training annually, which may count towards overall training hours required. This includes staff with job duties that extend outside of the SNP but still engage in procurement for the SNP.

The specific number of annual procurement training hours is determined by the CE, and the focus of the procurement training may depend on each staff member's job specific training needs and experience. TDA offers a web-based basics of procurement training located at [SquareMeals.org](https://www.squaremeals.org) that CEs may use to meet the training requirement. Education Service Centers (ESCs) also offer a variety of instructor-led procurement course options. However, CEs may choose to use procurement training from other organizations.

As with all professional standards training, CEs must maintain records that demonstrate compliance with the requirement.

Texas Senate Bills to Consider

| Texas Senate Bill 314 | Texas Senate Bill 571 |
|---|---|
| <p data-bbox="503 877 1569 1146">Relating to prohibiting certain food additives from being included in free or reduced-price meals provided by school districts.</p> <p data-bbox="469 1245 1602 1440">May not provide as part of a free or reduced-price meal any food that contains the following substances:</p> | <p data-bbox="1719 695 2878 1333">The Texas Legislature passed Senate Bill 571, which adds requirements to all "service providers" that school districts, ESC's, and other educational entities contract with for any type of service to complete the attached Pre-Employment or Pre-Service affidavit for Educational Entities Form, attached. This requirement went into effect September 1, 2025.</p> <p data-bbox="1909 1427 2682 1553"><u>Link to Pre-Employment or Pre-Service Affidavit Form</u></p> <p data-bbox="1909 1647 2682 1697"><u>Link to Texas Senate Bill 571</u></p> |

Region One Purchasing Cooperative Team



Lori Atwood Ramos
Purchasing Director

(956) 984-6123
laramos@esc1.net



Albento Anguiano
Procurement Coordinator

(956) 984-6178
aanguiano@esc1.net



Kristina C. Escobar
Cooperative Procurement
Specialist

(956) 984-6012
kcarrizales@esc1.net



Daisy Cuevas
Cooperative Procurement
Specialist

(956) 984-6217
dcuevas@esc1.net



Roberto Meave
Cooperative Procurement
Specialist

(956) 984-6249
rmeave@esc1.net



Idania Gonzalez
Procurement Technician

(956) 984-6204
idgonzalez@esc1.net



Thank You



956.984.6012



kcarrizales@esc1.net



www.esc1.net/services/operations/purchasing

