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## West Virginia Department of Education (WVDE)

### Procurement in the

### Summer Food Service Program (SFSP)

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#### What is procurement?

Procurement is the process of obtaining goods and/or services at the lowest, most competitive price possible. All SFSP sponsors must comply with the procurement rules.

The purpose of procurement is to

- ✓ Maximize full, open, and free competition
- ✓ Use responsive and responsible suppliers
- ✓ Promote transparency, integrity, and fairness
- ✓ Eliminate wasteful spending
- ✓ Optimal price, quality, and value
- ✓ Ensure customer protection

#### What is Less-Than-Arms-Length-Transactions (LTALTs)?

A related party transactions under which one party to the transaction has the ability to control or substantially influence the actions of others. 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 (i) divisions of an institution; (ii) institutions under common control through common officers, directors or members; and (iii) an institution and a director, trustee, officer, key employee of the institution or such a person's immediate family, either directly or through corporations, trusts or similar arrangements in which a controlling interest is held.

Family members include one party with any of the following relationships to another party: (i) Spouse, and parents thereof; (ii) children, and spouses thereof; (iii) parents, and spouses thereof; (iv) siblings, and spouses thereof; (v) Grandparents and grandchildren, and spouses thereof; (vi) Domestic partner and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the employee is equivalent of a family relationship.

Related party transaction is a transaction between the institution and its parent corporation, corporate divisions, subsidiaries, an employee(s), officer(s), agent(s) of the institution or members of their immediate family either directly or indirectly through corporations, trusts or

similar arrangements in which they hold a controlling interest, no matter how represented. All related party transactions are less-than-arms-length transactions. See also Less-than-arms-length transaction.

Arms-length bargaining means that buyers and sellers act independently from each other when negotiating a price, and they have no relationship to each other that might result in a price that does not reflect the actual fair market value of the good or service

All LTALTs require prior disclosure to the WVDE and justification for why it is needed. All less-than-arms-length transactions must be disclosed to DHS. Rental costs under less-than-arms length transactions for real property (facilities), equipment, vehicles, or durable supplies requires specific prior written approval of the WVDE and the FNS Regional Office. In order to determine if the cost related to a less-than-arms-length transaction is allowable, the WVDE requires supporting documentation including but not limited to the following: (1) copy of the lease agreement, (2) source documents related to the cost of ownership including tax returns, property tax records, insurance information, depreciation schedules, and maintenance costs.

Additional information may be requested to verify the cost of ownership. WVDE requires this information in order to assess whether the cost is reasonable and allowable. If supporting documentation is not provided, the cost will be disallowed as an unallowable expense. This means that child nutrition funds may not be used for payment of the unallowable expense.

The failure of the institution to identify and disclose to the WVDE related party transactions, less-than-arms length transactions, ownership interests in equipment, supplies, vehicles and facilities inhibits WVDE's ability to make an informed assessment regarding the allowability of a particular cost which will result in the disallowance of the cost and may subject the institution, its principals, employees, consultants or others to the administrative and legal remedies available to the WVDE and FNS.

### **Allowable Costs for LTALTs**

Rental costs under all less-than-arms-length transactions are allowable only up to the amount that would be allowed if the institution owned the property. This amount includes expenses such as depreciation, maintenance, taxes, and insurance. All less-than-arms-length transactions by institutions require specific prior written approval and must be supported by source documentation supporting the individual or entity's ownership costs. (See [2 CFR §200.465 Rental Costs of Real Property and Equipment.](#))

Furthermore, the rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace are unallowable. (See [2 CFR §200.465 Rental Costs of Real Property and Equipment.](#))

## Super-Circular (2 CFR Part 200) – specific sections

2 CFR §200.112 Conflicts of Interest states in part that institutions are required to disclose in writing any potential conflicts of interest (in accordance with applicable policies) to the Federal awarding agency or pass-through entity.

2 CFR §200.404 Reasonable Costs states in part that in determining reasonableness of a given cost, consideration must be given to the restraints or requirements imposed by such factor as: sound business practices; arm's length bargaining; Federal, state and other laws and regulations; and terms and conditions of the federal award.

2 CFR §200.465 Rental costs of Real Property and Equipment states that Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the non Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

2 CFR §200.465 also states that Rental costs under "less-than-arm's-length" leases are allowable only up to the amount for a sale and lease back arrangement. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of the non-Federal entity;

(2) The non-Federal entity under common control through common officers, directors, or members; and

(3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse, and parents thereof;

(ii) Children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Siblings, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in (i) through (v) of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph on “sale and lease back” arrangements) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable

## **Procurement Standards – Methods of Procurement**

### **Micro-Purchase (\$0-\$10,000)**

- ✓ Acquisition of supplies and services does not exceed the aggregate dollar amount of \$10,000.
- ✓ Aggregate cannot exceed \$5,000 (Contact the WVDE)
- ✓ To the extent practicable, the institution/sponsor must distribute micro-purchases equitable among qualified suppliers
- ✓ May be awarded without soliciting from multiple sources if price considered to be reasonable

### **Small Purchase (\$10,000-\$250,000)**

- ✓ Method of securing goods/services that do not cost more than \$250,000
- ✓ Aggregate totals for governmental agencies cannot exceed \$15,000 (Contact WVDE)
- ✓ Quotes must be obtained from at least 2 (preferably 3) qualified sources
- ✓ Document quotes
- ✓ Ensure quote specifications are equally distributed among all suppliers

### **Sealed Bids (Formal Bids) (over \$250,000)**

#### Competitive Proposals

- ✓ Contact the WVDE to assist
- ✓ Develop Invitation For Bid (IFB)
- ✓ IFB will be advertised publicly for 14 days
- ✓ WVDE will attend the bid opening and approve contract before it's signed

## Non-Competitive Proposals

- ✓ Item has single source availability
- ✓ The public's need is urgent, or there is an emergency need
- ✓ Limited time to purchase in the regular manner
- ✓ Competition has been deemed inadequate due to failed solicitation efforts

For more information on procurement in SFSP, please refer to the annual training available to current sponsors.

## **Nondiscrimination Statement:**

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **mail:**  
U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; or
2. **fax:**  
(833) 256-1665 or (202) 690-7442; or
3. **email:**  
[program.intake@usda.gov](mailto:program.intake@usda.gov)

**This institution is an equal opportunity provider.**