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# PROCUREMENT

in the **21<sup>st</sup>** CENTURY

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**National Food Service Management Institute**  
The University of Mississippi



# PROCUREMENT in the 21<sup>st</sup> CENTURY

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**National Food Service Management Institute**

The University of Mississippi

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**National Food Service Management Institute**

The University of Mississippi

***Building the Future Through Child Nutrition***

The National Food Service Management Institute was authorized by Congress in 1989 and established in 1990 at The University of Mississippi in Oxford and is operated in collaboration with The University of Southern Mississippi in Hattiesburg. The Institute operates under a grant agreement with the United States Department of Agriculture, Food and Nutrition Service.

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### **PURPOSE**

The purpose of the National Food Service Management Institute is to improve the operation of child nutrition programs through research, education and training, and information dissemination.

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### **MISSION**

The mission of the National Food Service Management Institute is to provide information and services that promote the continuous improvement of child nutrition programs.

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### **VISION**

The vision of the National Food Service Management Institute is to be the leader in providing education, research, and resources to promote excellence in child nutrition programs.

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## Introduction

The **School Nutrition Program (SNP)** is a complex business operation. Schools nationwide strive to serve nutritious, delicious, quality meals in an efficient and economical manner. Throughout the existence of the SNP, the **United States Department of Agriculture (USDA)** has focused on assisting state agencies and **School Food Authorities (SFAs)** to find efficient ways of providing nutritious meals to America's children. School nutrition programs include: School Breakfast Program (SBP); National School Lunch Program (NSLP); After School Snack Program (ASSP); Fresh Fruit and Vegetable Program (FFVP); Special Milk Program; Seamless Summer Option (SSO); and Summer Food Service Program (SFSP).

It is beneficial to maximize every opportunity to learn about the ever-changing world of school nutrition. Understanding current trends, common industry terminology, and regulation updates are responsibilities of all stakeholders. In addition, federal laws and regulations require state agencies and SFAs to comply with a host of requirements and rules specifically addressing procurement of goods, products, and services for SNPs. School nutrition programs are required to adhere to federal, state, local, and district policies.

By participating in regular training opportunities provided by USDA, **State Agencies (SAs)**, the **National Food Service Management Institute (NFSMI)**, and the **School Nutrition Association (SNA)**, stakeholders can acquire the most current information applicable to their operation.

This resource provides general concepts about procuring goods, products, and/or services. The purpose of this resource is to assist school nutrition directors in identifying key considerations during the decision-making process based on the complexity of implementing a cost-effective procurement system in the SNP.

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PROCUREMENT  
in the **21<sup>st</sup>** CENTURY

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## Procurement

**P**rocurement is a multi-step process for obtaining goods, products, and/or services at the best possible price. Proper planning before procuring a good or service is worthwhile and has a critical role in the district's ability to obtain the high-quality products and services needed at the lowest possible cost. Planning the procurement document for solicitation can be time-consuming, therefore, allocating the necessary time in the planning stage will enable the district to make more effective use of its resources and ensure the procurement is consistent with applicable laws. Adequate planning can also help to ensure competitive procurement. Planning the procurement means taking a systematic approach before releasing the solicitation. Steps involved in a systematic approach are shown below.

### Procurement

- Implement Principles of Good Procurement
- Competitive Procurement: Understanding Informal, Formal, and Noncompetitive Procurement Methods
- Practice Ethical Behavior
- Understand Stakeholders' Expectations
- Determine the Menu
- Screen the Product
- Forecast the Quantity
- Allow Adequate Solicitation Lead Time
- Write Specifications
- Control Product Movement and Cost Management
- Create the Solicitation Document
- Announce the Solicitation
- Award the Contract
- Manage the Contract

The most effective procurement system includes: competent personnel, appropriate equipment, proper facilities, communication relating orders to delivery, and an easy and prompt feedback system. In addition, some states and local districts may require more stringent procurement procedures. Clarify with your state and local authorities the procedures appropriate for your program.

School Nutrition Programs (SNPs) are federally funded programs, and operation of such programs must comply with federal, state, and local guidelines. It is important to allow adequate time to complete the process as some states require all documents used in the bid solicitation process to be reviewed prior to the bid solicitation being sent out to prospective respondents and federal regulations require some contracts be reviewed by the state agency prior to execution.

The School Food Authority is the governing body responsible for the administration of one or more schools and has legal authority to operate any of the federal meal programs.

The SFA staff is a group of internal stakeholders representing the school district's best interest. The team may include: the designated SFA, school nutrition staff, business manager, procurement officer, and/or school board members.

The School Food Authority staff determines the following:

- the type of goods or services needed,
- the quantity (for goods) or frequency (for services) needed, the quality needed,
- any special requirements for any of the items (i.e., printer cartridge that are compatible with the brand and model of printers),
- the date by which delivery is needed,
- the location(s) to which delivery will occur, and
- legality of the procurement process.

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### **Accountability to Taxpayers**

Accountability of the effective use of SNP funds to provide nutritious food to enrolled children is of interest to the taxpayer, Congress, and the media. **Transparent** means that everything done by the SFA must be clear, forthright, and out in the open. Transparency in the procurement process will lead to accountability and cost effectiveness, which are especially important in federally funded programs such as SNPs. Ultimately, the state and local officials who administer these programs are accountable to taxpayers for the way in which they use program funds.

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## Buy American Provision

The **Buy American Provision** (in section 12(n) of the National School Lunch Act) requires schools to purchase, to the maximum extent practicable, domestic commodities and products. A domestic commodity or product means an agricultural commodity that is processed in the United States, and/or a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. Purchases made in accordance with the Buy American Provision must still follow the applicable procurement rules calling for free and open competition. Any entity that purchases food or food products on behalf of the SFA must follow the same Buy American Provision.

Under the Buy American Provision, SFAs must ensure end-products received from processors contain only domestic goods (e.g. flour used to make chicken nuggets). SFAs should include a Buy American clause in all product specifications, solicitations, purchase orders, and any other procurement documents so vendors are aware of this requirement.

Check with your state agency for the most current information applicable to your program. For additional information review the April 17, 2006 USDA Policy Memo Code: SP 20-2006, Procurement Questions Relevant to the Buy American Provision which can be accessed at:

[http://www.fns.usda.gov/cnd/governance/Policy-Memos/2006/SP\\_20-2006.pdf](http://www.fns.usda.gov/cnd/governance/Policy-Memos/2006/SP_20-2006.pdf)

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## Higher Quality Goods and Services

The owner of a company may wish to maximize his or her profit on every sale made. In a competitive procurement environment, it may be a better business decision for a seller to accept a smaller margin of return on a given sale than it is to make no sale at all. In a competitive environment, a purchaser (i.e. the SFA) is likely to receive more goods or services, or higher quality goods or services, for a lower price than would be the case in a noncompetitive environment.

Competition is required to secure the best price for the best quality product or service. Businesses in a competitive environment continuously attempt to differentiate themselves, not only in terms of price, but also in terms of services and innovation. For example, the SFA is more likely to receive goods, products, and/or services at a lower price in a competitive environment than in a non-competitive one. Competition is one of the key principles discussed in the section entitled, Principles of Good Procurement.



## Principles of Good Procurement

All procurement transactions must be conducted in a manner that provides **free and open competition** consistent with procurement standards. Free and open competition means that all suppliers are playing on a level playing field and thereby have the same opportunity to compete. Fairness and integrity in all aspects of the procurement process are critical to achieving free and open competition. Competition requires the act of seeking responses from qualified suppliers be consistent with the size and nature of the procurement and are capable of meeting the terms and conditions of the contract.

### Principles of Good Procurement

- Free and Open Competition
- Fairness and Integrity
- Responsive and Responsible

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### Free and Open Competition

Procurement procedures may never unjustifiably restrict or eliminate competition. Examples of what is considered restrictive competition include, but are not limited to:

- placing unreasonable requirements on distributors in order for them to qualify to do business,
- having organizational conflicts of interest,
- having unnecessary bonding and experience requirements, and
- specifying only a brand name product instead of allowing a preapproved equal product to be offered restricts free and open competition.

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## Fairness and Integrity

The procurement process cannot be both effective and self-serving. No matter how strongly the SFA official may prefer a particular product or supplier, other comparable products and suppliers must be given every reasonable consideration.

SFAs must make sure that ethical safeguards exist and are maintained at all levels in the organization and in all aspects of the procurement process. Identifying and correcting unethical actions (whether real or apparent) in the procurement process and in the procurement of individual products and/or services is absolutely essential to maintaining integrity. When an unethical action is identified, the SFA must immediately take action to correct it. Not addressing unethical practices until potential **vendors/bidders** protest is not appropriate and diminishes the integrity of the procurement process and of the SFA.

No employee shall participate in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. [7 CFR 3016.36(b) (3); 7 CFR 3019.42] Employees shall neither solicit nor accept gratuities, favors, or anything of monetary value from vendors or proposed vendors. [7 CFR 3016.36(b) (3) (iv); 7 CFR 3019.42]

The SFA is ultimately responsible for implementing federal, state, and local requirements related to the School Nutrition Program.

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## Fairness and Integrity Good Practices

- Use the procurement process to obtain high-quality goods or services at the lowest possible price.
- Develop a solicitation that contains specifications that are clear and not unduly restrictive.
- Publicize the solicitation appropriately to the widest possible audience to foster maximum free and open competition.
- Write clear evaluation criteria that are not unduly restrictive.
- Allow adequate time for respondents to prepare responsive bids or proposals, ensure transparency in the opening and evaluating of bids and proposals, and document the entire process.
- Procure within the awarded scope, (i.e., quantity of goods and services) identified in the solicitation.

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## Responsive and Responsible

A **respondent**, also referred to as a vendor/bidder, is a commercial enterprise, a public or nonprofit private organization, or an individual that responds to a solicitation and potentially enters into a contract with the SFA. To be considered responsible, a vendor must be capable of performing successfully under the terms and conditions of the contract. Qualified respondents must be eligible, able, responsive, and willing to provide the product or service being sought.



## Qualified Respondents

- Eligible
- Able
- Responsive
- Willing

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### Eligible

Eligible means the respondents contacted possess licensing or certification if required to perform a particular task. For example, if accounting services are needed for a special project, it may be necessary to require the respondent to be a certified public accountant. Eligible also means that there is no conflict of interest or other constraint, such as disbursement, that would prohibit the SFA from selecting a particular vendor.

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### Able

Able means the respondent is capable of providing the desired product or service. Clearly, contacting a small neighborhood store is probably inappropriate if the district needs to obtain 5,000 units of a particular product, even if the product is small. Similarly, it would make little sense to contact a trucking firm when seeking accounting services.

Respondents' capability to perform can be measured by the following:

- vendor integrity,
- record of past performance,
- experience,
- required licensing or professional certification,
- financial resources,
- eligibility for participation in a federally supported contract, and
- technical resources.

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### **Willing**

Willing simply means that the respondent is thought to be interested in obtaining the business. Of course, the SFA cannot know whether each and every source it contacts is going to be interested, but it must avoid contacting persons or firms known not to have an interest in competing simply to document that the SFA has contacted a certain number of potential sources.

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### **Responsive**

To be considered responsive, a vendor/bidder submits a responsive solicitation/offer. A responsive vendor/bidder is one who clearly indicates compliance without material deviation from the solicitation's terms and conditions. A responsive vendor/bidder possesses, at the time of contract award, the experience, facilities, reputation, financial resources, and other factors necessary to successfully fulfill the terms of the contract.

Another very important principle to remember is that, regardless of which procurement method the SFA uses, awards must be made only to responsive and responsible vendors. If a vendor submits a response of no solicitation or no response, it is not considered as receiving a responsive solicitation or offer.

The SFA cannot arbitrarily decide to use any procurement method; the SFA must consider certain factors and the estimated value of the procurement in order to determine an appropriate procurement method. Appropriate procurement methods are discussed in the section entitled, Competitive Procurement.

## Competitive Procurement

All procurements, regardless of dollar value, must be competitive, unless requirements to conduct a noncompetitive requirement are met. Noncompetitive requirements such as emergency contracts or sole source contracts are rare and must meet the criteria for noncompetitive procurement as outlined in the governing regulations. The method of procurement used must be appropriate to a particular procurement action. The SFA must decide if the procurement will be informally (i.e., small purchases) or formally (i.e., IFB or RFQ) solicited.

### Competitive Procurement

- Small Purchases
- Invitation for Bid (IFB)
- Request for Proposal (RFP) Price

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#### Small Purchases

**Small purchase procedures**, also known as informal procurement, are those relatively simple and informal procurement methods for securing services, supplies, or property that may be used when the anticipated acquisition will fall below the small purchase threshold. The federal small purchase threshold has been changed (SP 01-2013, October 2, 2012) from \$100,000 to \$150,000.

Details regarding small purchase procurement procedures are discussed in the section entitled, Small Purchases – Informal Procurement.

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#### Invitation for Bid (IFB) and Request for Proposal (RFP)

An **Invitation for Bid (IFB)** is used in formal procurements. An IFB is a type of solicitation document used in competitive sealed bidding in which the primary consideration is cost and the expectation is that competitive bids will be received and an acceptance (award) will be made to the responsive and responsible respondent whose publicly opened bid is lowest in price. An IFB is used when there is no substantive difference among the products or services that meet specifications and the key difference among responsive bids is price.

A Request for Proposal (**RFP**) is also a type of solicitation document used for the formal procurement method of competitive proposals. Competitive proposals solicit a technical

proposal that explains how the prospective vendor will meet the objectives of the solicitation document and a cost element that identifies the costs to accomplish the technical proposal.

The **RFP** is used when price, while still the major consideration, is only one of the criteria considerations among bids for products or services that meet specifications. The RFP allows for negotiations and evaluation criteria to obtain the best value for the price. The IFB does not allow for negotiations and while it does contain criteria to assess quality it does so in a pass/fail approach as opposed to scoring the evaluation criteria to obtain the best value for price. The goal of both the competitive sealed bidding (IFB) and competitive proposals (RFP) methods is to obtain the best valued product at the lowest price. To be considered responsive, a vendor/bidder must submit a response to the IFB or RFP that conforms to all material terms and conditions of the solicitation. For additional information on IFB and RFP see the sections entitled, Invitation for Bid — Competitive Sealed Bidding and Competitive Proposal — Request for Proposal.

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### Similarities between Small Purchases and Formal Procurement Methods

Small purchases and formal (IFB and RFP) procurement methods share some similarities.

- Both require the use of a solicitation.
- Both require competition.
- Both must be free of anticompetitive practices.
- Contracts awarded under these methods cannot be awarded on the basis of a cost plus percentage of cost or a cost plus percentage of interest (7 CFR Part 3016 and Part 3019).

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### Differences between Small Purchases and Formal Procurement Methods

Some significant differences between small purchase methods and formal (IFB and RFP) procurement methods are as follows.

- Small purchase methods will almost always lead the SFA to receive fewer solicitations than will a formal procurement process.
- Formal procurement methods are more rigorous and prescriptive than the small purchases methods in that they involve more time and effort to develop and publicize the solicitation and to award the contract.
- Formal procurement methods involve the drafting of a solicitation document that is far more detailed and complex than that which would be used in a small purchase.
- Formal procurement methods take many more steps to ensure its intent to procure a good or service was widely and publicly solicited among prospective respondents.

Details regarding small purchase procurement procedures are discussed in the section entitled, Small Purchases – Informal Procurement Methods.

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## Price

Often price and availability of food items such as produce are subject to significant fluctuation. For formal purchasing, the SFA must decide if their solicitation will result in a fixed price contract (IFB or RFP) or cost reimbursable contract (RFP only).

It may not be possible to find vendors who will guarantee a solicitation price for a full year. In this type of situation, it may be best for the SFA to break up the procurement into smaller procurements to allow the SFA to benefit from market conditions. These small procurements may fall under the applicable small purchase threshold and allow the SFA to use the small purchase method. However, a SFA should never attempt to break up a procurement simply to fall below the small purchase threshold and apply a less rigorous process. If an SFA breaks up its procurement into smaller procurements it must be able to document the justification for doing so.

For example, the SFA may find that fresh produce may be considered a separate market given that it shares similar characteristics as bread and milk. The SFA may want to separate this procurement from their overall food procurement but it would need to document its reason for doing so. Another example: if the SFA is participating in an activity such as a Harvest Week for their SNP, in which they are trying out new vegetables and it is necessary to procure specific food items, it may make more sense for the SFA to conduct a separate procurement for those specific products.

The majority of procurement regulations for school districts or individual schools implementing or operating a procurement system are in 7 CFR 3016.36 and 7 CFR 3016.60 of the federal regulations. Federal, state, and local procurement regulations are in place to ensure funds used to purchase products and/or services result in the best quality and most responsive products. USDA requires that all purchases made by local school officials, whether funded wholly or in part with SNP funds, are conducted in accordance with all federal procurement requirements. State and local governments also may have requirements that must be followed.

The SFA may receive general specification information to use in developing its IFB or RFP. This information can only be used for the purpose of developing a specification. The information received from a vendor cannot be used word for word in a solicitation. A person who develops drafts, specifications, requirements, statements of work, invitations for solicitations, requests for proposals, contract terms and conditions, or other documents used by the SFA in conducting the procurement may not compete for the procurement. The SFA must be careful not to lift the words of potential bidders as doing so could potentially exclude the individuals from the bidding process.



## Small Purchases – Informal Procurement Methods

**S**mall purchase procedures, also known as informal procurement methods, are those relatively simple procurement methods for securing services, supplies, or property that may be used when the anticipated acquisition will fall below the small purchase threshold. If the estimated value of the procurement contract is at or above the applicable small purchase threshold (whether federal, state, or local), the procurement must be formally solicited. This situation would warrant a formal procurement method (competitive sealed bidding or competitive proposal).

Competition must occur whether the procurement exceeds or falls below the federal small purchase threshold, currently set at \$150,000. State and local regulations often set lower small purchase thresholds which are more restrictive than the federal level. The SFA is not required to use the small purchase method even if the value of the procurement falls below the applicable small purchase threshold; it can opt to use either the small purchase method or a formal procurement method.

In applying the small purchase threshold, the SFA must adhere to the most restrictive, lowest limit set. If small purchase methods are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

### Small Purchases Sources

- Determining Sources to Contact
- Contacting the Sources
- Small Purchases-7CFR Part 3016.36

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### Determining the Sources to be Contacted

Once the written informal solicitation document has been developed, the next step is to contact the sources of supply. What constitutes an adequate number of sources? Clearly, the lower the anticipated dollar value of the procurement, the less critical the answer will be, but a minimum of two sources should always be contacted. It is a good practice to obtain in writing three sources that are eligible, able, and willing to provide the product, goods, and/or services.

Maintain the solicitation document and keep records of the informal solicitation process. The state agency will do more than simply check to see that a certain number of sources were always contacted. Clear, organized records will assist the state agency in their judgment in determining free and open competition as well as provide appropriate documentation of the award process and decision, should a bidder file a protest of award.

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### Contacting the Sources

Sources can be contacted by phone or in person, or a written solicitation document can be sent to them by mail, E-mail, or fax. If the school nutrition director intends to solicit price or rate quotes over the phone or in person, he or she should have the written solicitation document in front of him or her so that the same requirements are described to each vendor contacted.

In many cases, after the phone call, the director may wish to send the written solicitation to the potential vendors to ensure that each has exactly the same information about the district's needs when developing its price or rate quotation. If the director has contacted a vendor in person, he or she can leave the written solicitation with the vendor at the end of the meeting. Furthermore, the director should make sure the following are documented:

- name of the district's official making the solicitation;
- date of the solicitation;
- name of the company solicited and the name of the individual responding on behalf of the company;
- written price quote from each responding vendor;
- date the quote is provided;
- quantity or frequency of goods or services being purchased upon which the price or rate quote was based; and
- duration of the price or rate quote (i.e., how long the vendor is willing to sell at this price or rate).

This documentation may not convey at first glance the sources are eligible, able, responsive, and willing. It will identify who was contacted and their response. This information will assist the state agency reviewer when examining the district's records the SFA staff has contacted sources who are eligible, able, and willing.

**Note:** Because small purchase procurement procedures typically involve telephone contact in an early stage of the procurement, some may feel it is easy to discuss terms with the vendor while on the telephone. Please remember all vendors must have an opportunity to respond to the same specifications, including any possible alterations in the original terms of the solicitation.

SFAs must be aware putting pressure on respondents to drop their price quickly over the phone because of another respondent's price is unallowable practice. Additionally, SFAs should verify state and local procedures governing the release of solicitation information.



SFAs may find it beneficial to advise the non-selected respondents as to why they were not awarded the contract, as doing so may encourage more responsive solicitations in subsequent bidding periods. Before releasing this information, SFAs should verify state and local procedures governing the release of solicitation information.

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### **Small Purchases – 7 CFR Part 3016.36**

- Award only to responsible respondents with the ability to perform successfully.
- Conduct in a manner that maximizes free and open competition.
- Monitor under a contract administration system to ensure that vendors perform in accordance with the requirements of their contracts.
- Document records that detail the history of the procurement process.
- Use a solicitation that clearly describes the product or service to be procured, without restricting competition.
- Price or rate quotations shall be obtained from an adequate number of qualified sources.
- The law prohibits breaking up bids to smaller units (keeping individual purchases under the small purchase threshold) in order to avoid the competitive sealed bidding process.
- Cannot be awarded on the basis of a cost plus percentage of cost or percentage of contract.
- Cannot be awarded using a geographical preference (7 CFR Part 3016.60), except in those cases where applicable federal statutes expressly mandate or encourage geographic preference such as the Food, Conservation, and Energy Act of 2008 (P.L. 110-246), also known as the Farm Bill.

This section focused on small purchase procedures, also known as informal procurement methods.

The following information is needed when evaluating a formal procurement solicitation documents:

- clear and concise product specifications, such as grading, weight, item labels, and nutrition qualities;
- all of the requirements the respondents must fulfill;
- the ability to perform the scope of work and meet the timeline; and

Details regarding a formal procurement methods are discussed in the sections entitled, Invitation for Bid — Competitive Sealed Bidding and Competitive Proposal — Request for Proposal.



## Invitation for Bid – Competitive Sealed Bidding

**C**ompetitive Sealed Bidding is a formal method of procurement in which sealed bids are publicly solicited (i.e. through an IFB) resulting in the award of a fixed price contract to the responsible and responsive respondent.

### Invitation for Bid – Competitive Sealed Bidding

- IFB
- Competitive Sealed Bidding

The invitation for bid (IFB) is an invitation to contractors or suppliers, through a bidding process, to submit a proposal on a specific service or product to be furnished for a specified period of time. In this case, the IFB must be publicly advertised and opened with the lowest responsive bid receiving the award. Bids must be solicited from an adequate number of known suppliers, providing them with sufficient time to respond prior to the date set for opening the bids.

As noted above, competitive sealed bidding is a formal procurement method in which sealed bids (IFBs) are publicly solicited and opened. An IFB contains detailed specifications of the products and/or services being sought by the SFA staff. Negotiation is not used with competitive sealed bidding. In fact, small districts sometimes use competitive sealed bidding when they do not have the in-house expertise to negotiate contract terms and price with potential respondents.

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### When is competitive sealed bidding (IFB) used?

An IFB requires the organization to provide clear, concise specifications and should describe the minimum standards expected of a responsible respondent in measurable terms. Bids will be solicited from an adequate number of known suppliers, providing them with sufficient time to respond prior to the date set for opening the bids. An IFB is a formal method of procurement that uses sealed bidding and results in a fixed price contract with or without adjustment factors.

IFBs are used when:

- complete specifications or descriptions of the product or service are available or could easily be developed by the SFA,
- responsive bids differ along no dimension other than price, and
- more than one qualified source is thought to be willing and able to compete for the award.

The public announcement and opening are very important phases of the sealed bidding process as they are critical to ensuring that the procurement occurs on a level and fair competitive playing field. A fixed price contract is awarded to the responsible respondent whose bid, conforming to all the material terms and conditions, is lowest in price.

In contrast, when using a competitive proposal, the SFA staff must have sufficient skill and expertise to conduct negotiations and evaluate proposals. Negotiations are conducted with one or more of the sources submitting proposals, and either a fixed price or cost reimbursable contract is awarded, depending on the structure of the solicitation. SFAs must be able to measure and document why one company's response to a particular criterion is better than another. A request for a competitive proposal is discussed in the section entitled, Competitive Proposal — Request for Proposal.

## Competitive Proposal – Request for Proposal

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### What is a competitive proposal?

Competitive proposals (i.e. through an RFP) are also known as competitive negotiations. A **competitive proposal** is appropriate when the procurement cannot be adequately described or the scope of the services cannot be clearly defined. Requests for proposals and elements found in the responses to those requests are explained below.

### Competitive Proposal

- Request for Proposal (RFP)
- Two Elements Found in Responses to RFPs

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### Request for Proposal

While price alone is not the sole basis for award, price remains the primary consideration when awarding a contract under the competitive proposal method. The RFP identifies the goods, products, and/or services needed, and all significant evaluation factors. The RFP is publicized and is used to solicit proposals from a number of sources. Competitive proposals may be used if conditions are not appropriate for the use of competitive sealed bids.

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### Two Elements Found in Responses to RFPs

The response to a competitive proposal solicitation (RFP) consists of two distinct elements:

- the technical proposal, in which the respondent explains how the task will be accomplished; and
- the cost proposal, in which a respondent provides the costs for accomplishing its technical proposal.

Since the SFA staff does not know precisely how the task can best be performed, the technical proposals are as important to the purchaser as the cost proposals. The RFP will ask respondents to identify how they will accomplish the requested services. The RFP describes the SFA's specifications and requirements for the goods, products, and/or services being sought, and any other conditions that respondents must meet in order to be considered responsive and responsible.

Once the deadline for the receipt of responses arrives, the responses are ranked using the criteria identified in the solicitation document (RFP). The SFA staff must have sufficient skills and expertise to evaluate proposals and/or conduct negotiations. Remember that an RFP will be issued when factors in addition to cost will be taken into consideration in awarding a contract. Therefore, the SFA must be able to measure, justify, and document why one company's response to a particular criterion is better than another's.

An RFP must, at a minimum:

- state the purchasing agency's need using clear and thorough specifications that are not overly restrictive;
- specify the anticipated terms and conditions of the contract;
- provide information that the respondent must include in their proposal as to how they will accomplish the services requested;
- identify each factor that the purchaser will use to evaluate the proposals and award the contract;
- describe how technical and cost factors will be considered in making the final determination of which respondent will receive the contract [i.e. the relative importance (or weight) of each factor in the award of the contract]; and
- state that the award will be made, on the basis of price and other factors, to the responsive and responsible firm or individual whose response is most advantageous to the purchasing agency, after price and other factors have been considered.

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### **Why is there no public opening of the RFPs received?**

Unlike what occurs in the competitive sealed bidding (IFB), there is no public opening of the proposals received. Because receipt of the proposals is, under the competitive proposals method, only the first step leading up to the award of a contract, other steps, such as evaluation of the criteria for the technical and cost factors, and possible negotiation must be taken before the SFA can award the contract.

The RFP allows for technical factors to be considered and includes an objective evaluation of a proposed response. The use of the competitive proposals method requires establishing criteria to evaluate and score the proposals. The award is not solely dependent on price. The evaluation of a competitive proposal is discussed in the section entitled, Competitive Proposal (RFP) Evaluation.

## Competitive Proposal (RFP) Evaluation

**W**hen using the competitive proposals procurement method (RFP), the award is made to the respondent with the lowest price that can meet the specifications of the entire solicitation document, barring no unusual circumstances or documented reasons. Since the award is granted on lowest price after an evaluation of the technical and costs factors, and potential negotiation, has occurred, an objective evaluation with measurable outcomes should be developed in advance by the SFA staff. Elements of a competitive proposal evaluation are discussed below.

### Competitive Proposal (RFP) Evaluation

- Objective Evaluation
- Evaluation Criteria
- Solicitation Document Evaluation
- Review and Rank the Proposals

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### Objective RFP Evaluation

The following information is needed when evaluating the RFP solicitation documents:

- the method for return of discounts, rebates, marketing points, value added items, and applicable credits; and
- a clear description of the technical requirements for the materials, products, or services if warranted.

The written evaluation should identify specific criteria and provide a mechanism to rank or score the proposals. While cost should be the primary factor:

- too little weight on the cost may result in a strong technical proposal winning the contract, no matter how high the cost; and
- too much weight on the cost may result in a low bid winning the contract, no matter how poor the technical proposal.

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### Evaluation Criteria

The evaluation criteria may include: price, product specifications, service and deliveries, geographic preferences for local products, and overall qualifications. While cost is not the sole factor it should be the primary factor after negotiations. Assign a point value, percentage, or a scoring system for each of the factors to be evaluated.

When a respondent submits a reply to a solicitation document, the goods, products, or services offered in their response are above and beyond what was initially requested in the solicitation document should not be factored into the scoring evaluation. The award decision must always be based on the criteria outlined in original RFP and not on any additional factors the respondent has chosen to add. To factor in overly responsive items allows for unfair competition as other respondents who were strictly responsive to the solicitation document are now at an unfair disadvantage. Overly responsive items could include having a respondent offer to provide hundreds of thousands of dollars of Point of Sale (POS) equipment when POS equipment was not sought in the original solicitation document.

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### Solicitation Document Evaluation

Before the solicitation document is sent out for public announcement, the criteria for evaluation must be developed in advance and included in the solicitation. Federal regulations do not prescribe the maximum number for evaluation points and while cost does not have to exceed 50% it should still be the primary factor as exemplified below.

#### Solicitation Document Evaluation Criteria—Example

Solicitations will be evaluated based on price; product specifications; service and deliveries; geographic preference; discounts, rebates, and applicable credits; and overall qualifications. The components for evaluation might be weighed like this:

Price	30 Points
Product specifications	20 Points
Service and deliveries	15Points
Geographic preference	15 Points
Discounts, rebates, and applicable credits	15 Points
Overall qualifications	05 Points

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### Review and Rank the Proposals

The SFA staff should ensure that the proposals are responsive and eligible for consideration. Next, the team needs to carefully review and rank the proposals.



To do this, it is strongly recommended the team:

- have at least two persons—a subject matter expert and a person with knowledge of the district's contracting requirements—review and rate the proposals, using the evaluation criteria set forth in the RFP; and
- employ a two-step process, in which all technical proposals received are evaluated before cost proposals are reviewed; and the companies with the top-rated technical proposals are identified.

To ensure that the technical proposal is evaluated independently of cost, the respondent could be asked to send the technical and cost proposals in two different packages. This is an option, not a requirement. It is perfectly fine to have both proposals sent in one package.

When goods or services are available from either a sole source, single vendor, or in special circumstances (e.g., emergency situation caused by natural disasters), noncompetitive proposal procurement methods are required. Noncompetitive proposals are discussed in the section entitled, Noncompetitive Proposal.



## Noncompetitive Proposal

**N**oncompetitive proposal is a procurement method used when competition is deemed inadequate or impossible due to public exigency or emergency. Unfortunately, this procurement method is the most widely misunderstood of all procurement methods. Negotiations must include both price and terms using the same procedures that would be followed for competitive proposals.

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### Noncompetitive Proposal

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed solicitations, or competitive proposals and one of the following circumstances applies:

- The item is available only from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- The awarding agency authorizes noncompetitive proposals.
- After solicitation of a number of sources, competition is determined inadequate.

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### When is it appropriate to use noncompetitive proposals?

**Wrong Answer #1:** Noncompetitive proposal method is the procurement method I use when I run out of time, and I need to buy something right away without taking the time to compete.

Why it's wrong: The use of noncompetitive proposal cannot be justified simply because the SFA has failed to plan properly. In fact, conducting a noncompetitive procurement for this reason would result in an unallowable contract.

**Wrong Answer #2:** The noncompetitive proposal should never be used. It's allowable only when there's one source of a product or service in the entire world, and I don't think that ever really happens.

Why it's wrong: While a sole source situation should be fairly uncommon, there are real-life sole source situations, as well as other legitimate reasons for the SFA to use the noncompetitive proposal method.

**Wrong Answer #3:** I've used noncompetitive proposals in an emergency situation; and then, when the contract is up for renewal, I simply negotiate with the current vendor and no one else.

Why it's wrong: Although a public emergency can justify the use of noncompetitive proposals, the resulting contract is a short-term solution to the emergency situation. As a rule, contracts resulting from noncompetitive proposals are of short duration and must not be noncompetitively renewed.

So, if all these answers are, in whole or in part, incorrect, when can the SFA legitimately use noncompetitive proposals?

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### **Situation 1: A Single Solicitation Response or Offer is Received**

Noncompetitive proposals can be used when a single solicitation or offer is received in response to a properly conducted competitive solicitation, the procurement process has been competitive, but has led to a circumstance that justifies the use of noncompetitive proposals as the final stage of the competitive procurement process.

What should the SFA staff do if it receives only one response to an IFB or an RFP? The team must evaluate the circumstances of each situation:

- Does it appear that the SFA staff received one response because the solicitation document was poorly written or too restrictive, thereby limiting the number of companies willing to respond?
- Would a different description of the product or service specifications yield more than one offer?
- If the SFA staff decides the solicitation document was adequate, it has the choice of:
  - awarding the contract to the single respondent, or
  - attempting to noncompetitively negotiate better prices and/or terms with the single respondent.
- If the SFA determines the solicitation document inadvertently limited competition, it may re-advertise the procurement with a new solicitation.
- If there is not enough time to re-advertise, the SFA staff may contract with its sole respondent; that contract should be limited to the period of time stated in the initial solicitation document and must not be renewed.
- Inquiring as to why the non-responders did not submit an IFB or RFP could provide some insight to the team of how they might want to re-solicit.

Small districts may find it helpful to form a cooperative purchasing group or join with a neighboring district to increase interest to prospective vendors/bidders. Larger districts may increase competition by increasing flexibility in the terms of the procurement such as decreasing the number of drop sites (e.g. finding a way to transport the food themselves from one or a few locations to the rest of their schools rather than having the vendor deliver it to every kitchen).

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### **Situation 2: More Than One Solicitation Response or Offer is Received, but None are Responsive**

Another situation in which it is appropriate to use noncompetitive proposals is when the SFA staff, using either the IFB or RFP methods, receive multiple responses but none of them are fully responsive to all of the terms and conditions of the solicitation.

In this situation, as when the team receives only one solicitation response or offer, the use of noncompetitive proposals occurs at the end of the formal competitive procurement process. Potentially, this is an extremely tricky situation for the SFA staff. Consider the following:

- If the SFA negotiates with one of these non-responsive respondents and awards a contract, the other non-responsive respondents might have the basis for a solicitation protest.
- If the SFA attempts to negotiate with all of the non-responsive respondents, it must be extremely careful to make sure that all companies are receiving the same information throughout the entire process.
- At best, this process is difficult and time-consuming. At worst, it could lead to claims by any of the unsuccessful respondents that the winning company had received different information or preferential treatment from the SFA staff.

The best practice for the SFA staff faced with multiple non-responsive offers is to conduct a new procurement using a solicitation document that has been modified as a result of the additional information obtained in its first, unsuccessful attempt to formally compete the procurement. If there is not enough time to conduct a new procurement, the SFA may contract with the best respondent. That contract:

- should be no longer than is reasonable to conduct a new procurement and never more than one school year in length, and
- must not be renewed.

The SFA must formally re-solicit the next year's contract. To avoid receiving multiple solicitations or offers of which none are responsive, conduct a pre-solicitation conference with potential respondents. Such conferences allow the SFA staff to identify potential problems or misunderstandings prior to releasing the solicitation.

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### **Situation 3: Public Exigency or Emergency**

Under certain circumstances, a genuine public emergency (also referred to in 7 CFR Part 3016 and Part 3019 and some other sources as a public exigency) could justify the SFA's use of noncompetitive proposals with one or more potential vendors. Such public emergencies are rare, and might include:

- natural disasters,
- unforeseen labor stoppages,

- the vendor going bankrupt, or
- other circumstances beyond the SFA's control.

Failure to allow adequate time for conducting a competitive procurement does not constitute a public emergency, and must not lead to the SFA's entrance into a noncompetitive contract of normal duration. Rather, if the SFA failed to allow sufficient time for its competitive procurement process, it would use the noncompetitive proposals to enter into a time-limited contract with one vendor. That is, the duration of the contract would be only as long as the SFA needs to properly conduct a competitive process in the appropriate manner and, if necessary, make a smooth transition to a new vendor.

Please note that any contract resulting from the use of noncompetitive proposals in a public emergency must be of a limited duration, until such time as conditions permit the completion of an appropriate competitive procurement. There are few circumstances under which a contract resulting from noncompetitive proposals should be in effect for more than a few months. Furthermore, extending or renewing a contract resulting from noncompetitive proposals for more than a few months should occur only as a result of the most severe type of natural disasters or similarly rare circumstances.

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#### **Situation 4: Only One Source of the Product or Service Exists (Sole Source Procurement)**

**Sole source procurements**, in the SNP, occur when the goods or services are available from only one manufacturer through only one distributor or supplier. While sole source situations are rare in our programs it is possible for one to arise. For example, a SFA might own an older model oven that still works but the replacement parts are only sold by one manufacturer as the equipment is considered workable but outdated. Sole source describes a condition of the procurement environment. In a true sole source situation, conducting a traditional solicitation (sealed solicitation, competitive proposal, or small purchase) is a meaningless act because the element of competition will not exist. When faced with an actual sole source situation, the SFA must first obtain SA approval, and then go directly to the one source of supply to negotiate terms, conditions, and prices.

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#### **Approvals Needed for Sole Source Procurements**

Sole source procurements are more likely to occur when a SNP is purchasing cutting-edge technology or highly technical scientific products. SNPs typically do not procure these types of products or services. When the SFA staff believes that it needs to procure a particular brand name product in order to meet its requirements; the SFA must seek prior approval from the state agency to ensure that the solicitation does not restrict competition.

**Food and Nutrition Service (FNS)** requires that all sole source procurements be approved prior to award by the applicable state agency. Remember that this does not mean that the state agency must always grant prior approval to any contract involving noncompetitive proposals. This means that when a noncompetitive proposal is used due to the SFA's use of a brand name specification, or a claim that the product is available from only one source, the state agency

must concur with the need for a brand name or single source procurement if the contract is to be funded out of the nonprofit school nutrition account. Requirements vary by state; SFAs should check with their state agency.

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### Approvals Needed for Other Circumstances

What about when the use of noncompetitive proposals results from circumstances other than a sole source procurement? Must the use of noncompetitive proposals receive prior approval before being used under other circumstances?

FNS always has the authority to require the submission of procurement documents for review and prior approval by the state agency whenever a procurement exceeds the federal small purchase threshold and noncompetitive proposal will be utilized. This review protects the SFA, insofar as the written approval of the noncompetitive proposal method ensures that the SFA may fund the procurement out of the nonprofit school nutrition account.

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### Procurement Documents Requiring Pre-Award Review and Approval

It is FNS policy to require pre-award review and approval by state agencies of procurement documents in the following situations [7 CFR Part 3016.36(g)] These situations include:

- sole source procurements;
- brand name procurements over the federal small purchase threshold;
- competitive sealed bidding procurements exceeding the federal small purchase threshold when the SFA wishes to award a contract to other than the lowest respondent; and
- when a proposed contract modification substantially changes the scope of work identified in the original procurement, or when the proposed modification will increase the contract's cost by more than the current federal small purchase threshold.

**Note:** A state agency may request FNS to review a procurement that exceeds the federal small purchase threshold and involves the SFA which has failed to implement corrective action required by the state to resolve defects in the SFA's procurement procedures.

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### Approvals Required by State Agencies of Noncompetitive Proposals

What about state agencies? Can they implement policies and rules for approval of noncompetitive proposals in addition to those set by FNS?

Clearly, state agencies may not implement policies or rules that are less restrictive than the federal rules when it comes to noncompetitive proposals. States have broad authority to enact procurement rules that are more rigorous than those required by the federal government.

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**Example:**

A state having a small purchase threshold that is lower than the current federal standard could require prior approval of the use of noncompetitive proposals in any procurement exceeding the state's small purchase threshold.

Thus, using the current federal small purchase threshold of \$150,000, a state with a small purchase threshold of \$25,000 could require that all procurements above that dollar level be reviewed and approved by the state agency prior to the contract's award.

Regardless of the type of procurement method, school nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines. It is an ethical obligation to procure the quantity of products that you have requested from a stakeholder. Ethical practices are discussed in the section entitled, Ethics.



## Ethics

**E**thics can be defined as the moral standards individuals use to guide decisions in their personal and professional lives. In the business world, ethical behaviors are practices that promote free and open competition. Professional standards of conduct include avoiding even the perception of unethical practices. Accurate documentation is important to demonstrate compliance with the contractual terms and the district's policies.

Ethical violations in the workplace are a serious matter. For school nutrition professionals, unethical actions can be cause for termination and loss of funding for their program. Unethical practices can damage an employee's reputation and the reputation of the district. In some cases, ethical violations could even result in legal ramifications or prosecution. Think about the ethical scenarios below and determine if these are ethical practices.

### Scenarios – Is this Ethical?

- Supplier Relations
- Gifts and Gratuities
- Monetary Dealings
- Legitimate Discounts, Rebates, or Credits
- Conflicts of Interest
- Confidentiality

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#### Supplier Relations: Is this Ethical?

A vendor tells you there is a special on whole grain-rich dinner rolls. He states the rolls meet the USDA whole grain-rich criteria. The rolls will only be offered at a special price on Thursday. To receive the special price you will need to attend a luncheon hosted by the vendor and purchase the rolls during this time.

Answer: This is not an ethical practice. It is appropriate to develop professional, collegial relationships with your distributors. The key is establishing and understanding the parameters of the relationship with present or potential suppliers. Attending supplier-hosted lunches, dinners, or business organization meetings is acceptable as long as there is no obligation to do business with the host supplier as a result of attendance. While an occasional business lunch may be appropriate, holding business meetings with suppliers in social settings outside the office can create the impression of impropriety. Such behaviors may provide sufficient justification for potential distributors to seek an administrative bid hearing.

Other unacceptable and illegal practices include:

- showing preference to suppliers because of pressure from management,
- allowing personality to enter into purchasing decisions,
- giving preference to suppliers based on long-term business relationships,
- giving preference to suppliers based on political connections, and
- allowing anyone who is involved in manufacturing or selling the product to help you with writing the bid specifications or bid provisions.

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### **Gifts and Gratuities: Is this Ethical?**

A vendor has learned of your engagement and sends you a new house-warming gift. You take it home, and it looks beautiful on your fireplace mantle. How did he know exactly what to buy! You can't wait to thank him the next time you place an order.

Answer: This is not an ethical practice. Food distributors will often present gifts or gratuities as a way to earn your business or as a reward for being a loyal customer. A gift is anything of monetary value, including food, meals, travel, or entertainment, including tickets to shows or sporting events. As innocent as a gift may appear, the solicitation or acceptance of gifts for personal gain may be considered unethical. Refer to the school district's gift acceptance and gratuity policy for procedures specific to your district. In general, if there is a doubt regarding the ethics of accepting a gift, then do not accept it.

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### **Monetary Dealings: Is this Ethical?**

Your son calls and says he will need a new track uniform and money to purchase a \$200 pair of tennis shoes. You tell him the shoes are not in the budget. A vendor over hears the conversation and offers you a loan. You accept the offer and plan to pay him back in the near future.

Answer: This is not an ethical practice. Soliciting or accepting money, loans, credits, prejudicial discounts, or services from your present or potential suppliers can also be unethical because it might influence or appear to influence your purchasing decisions. In addition, never lend money to or borrow money from suppliers.

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### **Legitimate Discounts, Rebates, or Credits: Is this Ethical?**

A vendor indicates the product you purchased is eligible for a manufacturer's rebate. When you review your invoice you do not see the rebate. After contacting the vendor you discover he totally forgot to process the rebate, and the offer is no longer available. He states he will give you free product valued at the dollar amount of the rebate.

Answer: This is not an ethical practice. A rebate helps offset expenses and acts as a purchasing incentive. When you do receive legitimate discounts, rebates, or credits from a distributor, they need to be taken directly off the invoice which can serve as your documentation.

The regulations require vendors under cost reimbursable contracts to provide sufficient information to permit the SFA to identify allowable and unallowable costs, as well as the amount of all such discounts, rebates, and other applicable credits on invoices and bills presented for payment to the SFA (7 CFR 210.21(f), 215.14a (d) and 220.16(e)) Refer to: USDA FNS Memo Code: SP 01-2011, Revised April 5, 2011: Reaffirming the Requirement that School Food Authorities Comply with Federal Regulations Affecting Rebates, Discounts, and Other Applicable Credits in All Cost Reimbursable Contracts which is available at: [http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP01-2011\\_osr.pdf](http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP01-2011_osr.pdf) .

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### Conflicts of Interest

Sometimes circumstances may arise that create a personal or professional conflict of interest. A **conflict of interest** is any action that allows a person to benefit at the expense of the public interest or the expense of their employer. A conflict of interest occurs when the individual involved in the decision making process or someone close to this individual benefits by signing the contract. In this situation, any individuals involved in the conflict of interest should excuse themselves from the selection process. The following are some examples of what may be perceived as a conflict of interest for individuals in the decision making process.

- The company bidding on a contract with your school district is owned by your personal friend, relative, or school board member.
- You own stock in the company.
- Your friend or relative is an employee at the company in a position where they would profit from gaining the contract.

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### Confidentiality

Providing confidential information of any kind to any person or entity that was not designated to be privy to that information is considered unethical. For example, before contracts are awarded, distributors submit sealed bids. The cost and pricing information in these bids may not be made public until after a decision has been made to award the contract. Also, during the bidding process, you may not disclose information about your school district to a company unless the same information is given to all respondents. This information could give that company an unfair advantage in drafting its proposal.

For additional guidance on ethical procurement procedures, see the USDA Code of Federal Regulations (CFR) 7, part 3016 which can be accessed at:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=d5ad57a741650586074b3c9f00fcd888&rgn=div5&view=text&node=7:15.1.7.2.4&idno=7> .

It is important all stakeholders in the school nutrition supply chain practice ethical behaviors. Federal guidelines mandate procurements must be competitive. This is the responsibility of all stakeholders.



## School Nutrition Supply Chain

Procuring products is a complicated process that requires open communication, unity, and dedication from all entities involved in the supply chain. The school nutrition supply chain includes the SFA staff, the distributor, the manufacturer, the broker, and the USDA.

### The School Nutrition Supply Chain

- SFA Staff
- Distributors
- Brokers
- Manufacturers
- United States Department of Agriculture (USDA)

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#### SFA Staff

The **SFA staff** is responsible for forecasting the needs of the school nutrition operation, assessing equipment needs, optimizing **Stock Keeping Units (SKUs)** for similar products, determining product specifications, completing bid arrangements, and scheduling and accepting deliveries, while complying with federal and state regulations.

Each time a vendor stops at a location, the vendor incurs an additional expense. Consideration of the distributor's costs is another role of the SFA staff. Some suppliers will have a minimum drop size required to make a delivery, either a dollar volume or a specific quantity of cases. Some of the district's locations may not have adequate storage space to accommodate the required minimum case amount. It is important to identify specific details in advance that will satisfy both the vendor and the school nutrition operation's needs.

Grouping products is important to distributors only to determine the drop size guarantee implied. The drop size is an implied guarantee for several reasons. For instance, the number of cases ordered by a site will vary from week to week based on the menu. Also, the delivery period for USDA Foods often causes surges or drops in the amount of food purchased. If a purchaser says it is going to order 100 cases, then under contract law, 100 cases must be ordered.

The SFA staff may want to procure a respondent (vendor/bidder) who will buy on their behalf in a procurement agent capacity. The solicitation document should clearly identify the products to be procured.

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## Distributor

A **Distributor** is a commercial food company that purchases, receives, and/or stores commercial food products. Distributors sell, deliver, and bill the Recipient Agency (RA) for goods and services provided. A distributor sells the products made by manufacturers.

Once the contract has been awarded and signed, the SFA staff can prepare and place the order to the distributor. The distributor cannot begin submitting an order to the manufacturer until it has received a written award notification. The written notification activates the process. The distributor will take into account the ordering cycle, and delivery requirements. The distributor will review the district's request.

The distributor will communicate to the manufacturer the specifications outlined on the district's purchase order. The distributor has predetermined procedures for placing electronic orders with each manufacturer. Entering the necessary information in the appropriate format can be time consuming. Keep in mind the distributor will try to meet the district's needs in a timely fashion, but they may be faced with constraints beyond their control, which could impact their ability to do so.

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## Brokers

**Brokers** are independent sales agents who negotiate sales for manufacturers by working with food distributors and school nutrition operations. The broker assists manufacturers by introducing new products to the school nutrition market. Brokers can assist the SFA staff by providing samples for taste-testing to the districts.

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## Manufacturer

**Manufacturers** are the companies responsible for processing raw products, developing new products, and sending finished products to distributors. It is the manufacturer's goal to provide the freshest product while maintaining a reasonable inventory supply.

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## United States Department of Agriculture (USDA)

The **USDA** is the federal department responsible for administration of the nation's child nutrition and USDA Foods distribution programs. The Food Distribution Division of USDA's Food and Nutrition Service is responsible for coordinating the distribution of USDA Foods to state agencies that oversee the SNP in their states. The FNS administers the nutrition assistance programs of USDA. The mission of FNS is to provide children and needy families with better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts.

Schools should consider USDA Foods when writing specifications because certain items can be further processed into end products. Ordering USDA Foods may be done in a variety of ways and will be explained later in this resource.

Each stakeholder operates as an independent business, and each has specific sustainability goals. Understanding expectations in advance stimulates open communication and leads to desirable outcomes for the entire supply chain.

## Stakeholders' Expectations

Each stakeholder has a specific role in the food supply chain. The stakeholders expect each party to have some basic knowledge on the functionality of their operation. Although the expectations may widely differ, a steadfast approach in providing a healthy school environment is a common goal of all stakeholders.

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### SFA Staff

School nutrition professionals are mandated to provide healthful school meals. Providing cost-effective, high nutrient value meals can be achieved with careful planning, preparation, and a strong commitment from the school district.

### SFA Staff's Responsibilities

- Follow federal rules and regulations when preparing bids and all solicitation documents.
- Plan menus in advance and incorporate USDA Foods.
- Plan ahead to adequately prepare solicitation document.
- Ensure free and open competition by developing a solicitation document that presents respondents with enough detail to adequately respond but not so much detail that competition is limited.
- Establish fair and clearly defined performance expectations and complaint procedures.
- Negotiate, when appropriate, for longer contract terms (two or more years) that include price adjustment clauses.
- Forecast for established quantity based on past performance.
- Optimize the use of Stock Keeping Units.
- Generate specific product descriptions, including green criteria as appropriate.
- Generate pre-bid meetings, solicitation document, and contracts for vendors.
- Provide advanced written notification to the supplier before the placement of the first order to ensure timely distribution. Although not a federal requirement, a good practice is to provide a minimum of six weeks advanced notification.
- Establish reasonable delivery schedules and decrease frequency of drops whenever possible.
- Compile orders to meet required case or dollar volumes for delivery.
- Ensure staff availability to accept orders on scheduled delivery days and times.

- Ensure facilities are adequate to receive and maintain fresh and safe foods that will help to prevent spoilage and other loss.
- Provide adequate notification on product usage and menu changes.
- Use projected quantity in a reasonable time period.
- Purchase all special order products requested.
- Determine if new products are applicable for customers.
- Assure utilization of products and quantities within a 10% plus or minus variance of quantities specified; otherwise notify distributor immediately to avoid overstock or short coding.
- Provide notification of expected school closings, holidays, and changes in normal business hours.
- Minimize emergency orders.
- Provide current contact information to expedite product recall procedures.

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## Distributors

The distributor's responsibility is to secure the best price for the district within the financial boundaries of the company. The distributor has a wealth of knowledge and experience and can recommend some procedures to maximize the supply chain efficiency. By initially contracting for larger drop sizes, the overall cost of the deliveries will be reduced for both the distributor and the school district. The distributor will save money on fuel and labor, and the district will reduce the labor cost in receiving multiple deliveries.

The distributor can provide a statement of the products purchased or a **velocity report** by the district. The distributor may be able to identify ways to reduce SKUs, thus saving the district money and reducing inventory. The distributor seeks opportunities for prime distributor awards and cannot help in the preparation of the bid.

## Distributor's Responsibilities

- Follow federal rules and regulations when preparing bids.
- Submit aggressive volume bids.
- Guarantee receipt of fresh, safe food.
- Provide recipes that optimize SKUs.
- Place orders in a timely manner.
- Ensure delivery of product awarded each time an order is placed.



- Establish procedures to minimize shortages and substitutes.
- Provide flexible delivery schedules to accommodate school closings and inclement weather conditions
- Provide timely communications on limitations prior to submitting solicitation documents so accommodations can be considered.
- Provide notification if there is an excess of inventory, especially on date-coded products.
- Notify manufacturers of upcoming solicitation proposals, the product description, and specific requirements such as lead time.
- Provide notification of discontinued products, current inventory quantity and velocity reports.

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## Brokers

As the agent for awarded products, the broker will work to ensure that the process of getting the product to the distributor occurs in a timely and accurate fashion. The more lead time you can provide the distributor and broker will help to avoid hectic and rushed situations.

### Broker's Responsibilities

- Follow federal rules and regulations.
- Provide quality, safe foods.
- Ensure competitive pricing.
- Market new products.
- Provide current contact information for bid notifications.
- Communicate product recall procedures.
- Provide nutrient and ingredient information.
- Notify the manufacturer or SFA staff of product changes such as formulation, packaging, or discontinuation. Generally the manufacturer will make product changes and notify sales force to inform customers.

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## Manufacturers

The manufacturer contributes to the supply chain process by providing the products to the distributor. This may entail shipping the product from another geographic location or actually producing the product. In some cases, customers are allowed to directly purchase from the manufacturer when volume warrants.

### Manufacturer's Responsibilities

- Follow federal rules and regulations.
- Provide quality, safe foods.
- Ensure competitive pricing.
- Notify the SFA staff and brokers of product changes such as formulation, packaging, or if product is discontinued.
- Provide current contact information for bid notifications.
- Integrate USDA Foods into processed products as specified by the state agency or school district.
- Communicate product recall procedures.
- Create foods to meet school nutrition guidelines.
- Provide up-to-date nutrient and ingredient information and marketing suggestions for Point of Sale (POS).
- Keep distributor, broker and SFA staff abreast of new products.
- Complete correct documentation for **Child Nutrition (CN) Labeling**.
- Produce adequate quantity to eliminate/reduce shortages.

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### United States Department of Agriculture

USDA's FNS oversees the administration of 15 nutrition assistance programs, including school meals programs that touch the lives of one in four Americans over the course of a year. These programs work together to form a national safety net against hunger. For information about FNS and nutrition assistance programs, the National School Lunch Program and the School Breakfast Program, which provide nutritionally balanced lunches and breakfasts to millions of students every school day, visit the USDA FNS website which can be located at [www.fns.usda.gov](http://www.fns.usda.gov).

USDA Foods are available to any school that participates in a USDA SNP. USDA Foods account for 15-20 % of the foods in SNPs and are 100% American grown. It is critically important to determine during the planning stage how and when USDA Foods will be incorporated into the menu.

The quality and product expectations of USDA Foods have changed over the years. Improvements to USDA Foods keep pace with current nutrition and health advancements and coincide with the principles established in the *Dietary Guidelines for Americans*. USDA offers canned, frozen, fresh, dry, and refrigerated products; a variety of package sizes; and healthy new options that meet meal pattern requirements.

### **USDA Responsibilities**

- Keep procurement rules and policy memos up to date.
- Provide recall guidance.
- Communicate product recall in a timely manner.
- Provide quality, safe food.
- Identify approved USDA Foods processors.
- Provide timeline for ordering process.
- Provide up-to-date, nutrient, ingredient, and meal component information.
- Provide up-to-date meal component information for CN labeling.

Now that we have discussed the stakeholders' responsibilities and expectations it is important to recognize the importance of a well-planned menu. Details are discussed in the section entitled, Menus.



## Menu

The menu is the driving force that begins the procurement process. The menu must meet all federal guidelines and be appealing to the customer. A well-planned menu includes: whole grain-rich foods; fresh fruits and vegetables; a variety of shapes, textures, colors, and temperatures; and a blend of flavors. Some other factors to consider in menu planning include: equipment, food cost, cultural food preferences, labor costs, skill levels, environmental friendliness; and the availability of USDA Foods.

It is good practice for districts to use a cycle menu for a designated period of time. Menus created by seasons allow for the opportunity to incorporate in-season options. Planning menus in advance saves time, helps avoid repetitive tasks, reduces labor, and implements cost-effective inventory management. Standardized recipes and Stock Keeping Units (SKUs) are important considerations when planning menus.

### Menu

- Standardized Recipes
- Stock Keeping Units (SKUs)

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### Standardized Recipes

Standardized recipes are used to prepare menu items and identify the specific quantity for each ingredient, the number of servings, and the portion size for the recipe.

A **standardized recipe** is a recipe that has been tried, adapted, and retried several times for use by a given school nutrition operation. The recipe has been found to produce the same good results and yield every time when the exact procedures are used with the same type of equipment and the same quantity and quality of ingredients.

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### Stock Keeping Units (SKUs)

Good menu planning also includes optimizing Stock Keeping Units. A SKU is a unique identifier for each unit of product. The SKU is often the product code number. Think of all the menu items you can create with ground beef crumbles or grilled chicken patties.

In many cases school districts burden themselves with too many different products or SKUs. For instance, each flavor of juice is a separate SKU with its own product code number. Too many

SKUs equate to writing many different bid specifications and ensuring all items are properly received and inventoried. Reducing the number of SKUs is a best practice. This may be achieved by:

- eliminating menu items that sell less than 50 servings (25 servings per meal in a small school);
- using the same product for more than one menu item, such as one type of chicken patty for chicken on a bun, chicken parmesan, and grilled chicken salad; and
- allowing only substitutions that have been approved by the school nutrition director or central office person responsible for purchasing.

Identifying multiple uses for an inventory item is cost-efficient for both the district and the vendor.

Once the menu items have been established and the standardized recipes and SKUs have been defined; the next step is to identify pre-approved equal brands in the solicitation document.

A variety of brands exist for similar products. The federal regulations clearly forbid specifying only a brand name product instead of allowing a preapproved equal product to be offered. Conduct a paper, appearance, and taste screening for similar products. Screening is discussed in the section entitled, Screening the Products.

## Screening the Products

Some schools may find that their customers prefer certain brands which increases the number of meals served. The purpose of conducting a screening is to provide a list of preapproved, equal product brands in the solicitation document. The procurement procedures must ensure maximum free and open competition.

It is the responsibility of the SFA to ensure that the use of brand name specifications is limited.

If the decision is to use a brand name specification it must be accompanied by a written justification that fully supports the need to specify a particular brand name, product or feature. For additional information refer to AGAR Advisory United States Department of Agriculture Office of Procurement and Property Management AGAR Advisory No. 75 Use of Brand Name Specifications which is located at [http://www.dm.usda.gov/procurement/policy/advisories\\_x/agarad75.pdf](http://www.dm.usda.gov/procurement/policy/advisories_x/agarad75.pdf)

Screening of products is not required, and SFAs should be careful in screening products to ensure that they do not inadvertently exclude potential vendors. All interested potential respondents should be provided with a copy of the screening procedure. All screening evaluations should allow for all potential vendors to provide a product for screening (e.g., public advertisement). Establishing paper, appearance, and taste screening procedures in advance may reduce the possibilities of future bid protests. Keep accurate records of all three screenings. You may be asked to justify your choices.

### Screening Products

- Paper Screen
- Appearance Screen
- Taste Screen

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#### Paper Screen

This is the process of reviewing the product label provided by the distributor. The label contains a description of the product, the code number, the ingredients and a nutritional analysis. If the product has passed the label and nutritional screening, proceed to the appearance screening.

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## Appearance Screen

This is the process of examining the appearance of the sample. The most important aspect of the appearance screening is the product itself. Before beginning the appearance screening, determine quantifiers of what is wanted or expected for the appearance of the product. For instance, the roll should be golden brown with a slightly crunchy crust; a baguette would be long and thin, and would not pass appearance screening if it looked like a Kaiser roll. If it cannot be agreed upon what the product should look like, it will be impossible to determine if the product passes this screening. Since appearance is very subjective, it is best to reach consensus on minimum acceptable and unacceptable attributes prior to screening the product.

In addition to the product itself, it is important to review the appearance of the packaging of the product. Does it come in an individually wrapped package? If so, is it easy to open? Is the packaging attractive? Does it come layered in a case with parchment between the layers? Does the packaging maintain the integrity of the product when shipped and handled? If the product passes the appearance screening, proceed to conducting the taste screen.

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## Taste Screen

This is the process of conducting a taste test with your customers. Some products are too highly seasoned, too greasy, too salty, or too sweet. The goal is to offer customers good tasting, high quality products.

Determine in advance the criteria for documenting the results of the taste test. Consider including a description for texture, flavor, seasoning, how the product holds after cooking, and overall acceptance of the product in creating the evaluation tool.

Once the product(s) have gone through the adult taste screening, it's now time for the student customers to give their opinion. Prepare the product. Do not identify the brand name of the product. This is the final screen and determines whether the brand or the product will be preapproved to be placed on the bid.

A simple method for taste testing with elementary students involves using two containers, one labeled with a smiley face and one with a frown. The students vote with their disposable utensil or napkin used in the taste test by placing it in the appropriate container—smiley for acceptable and frown for unacceptable. In the same manner, at the junior and high school levels, the containers can be labeled either acceptable or unacceptable. An acceptability percentage such as 85% approval should be predetermined for products to be placed on the bid.



## Product Category

The menu and standardized recipe will help to determine the type of product to purchase. Product categories include Distributor's Choice Label, Private Label, and Manufacturer's Brand Label. It is worthwhile to investigate all categories before making any decisions.

### Product Category

- Distributor's Choice Label
- Private Label
- Manufacturer's Brand Label

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### Distributor's Choice Label

Products in this category contain only one or a few ingredients and represent a lower dollar volume. The supplier may quote a price on any brand, and the school district places no restrictions on the brands to be purchased. The supplier is not asked to identify the brand being quoted, and the site receiver does not check the brand delivered. Therefore, the distributor may change the brand without notifying the school district. The only requirement is that the product is in the pack and case size identified on the solicitation document. A case of pinto beans containing 12/#303 cans cannot be substituted if the specification calls for 6/#10 cans; 25 lbs. of salt specified may not be substituted for 100 lbs. or 10 lbs. of bulk product; a 50 lb. bag of sugar cannot be substituted with 2-25 lb. bags of sugar.

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### Private Label

Products in this category are packed under industry acceptable standards. The private label represents the supplier's brand. Many distributors have their own private label brand and prefer to sell it instead of brand name items. Again, although the supplier will choose the brand, it still must conform to the specification. In many cases it is worth the task of tasting these products.

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### Manufacturer's Brand Label

Products in this category are recognized by name and generally attract customers who are loyal to their name. Manufacturer's brand products are usually main entrees, contain multiple ingredients, and are processed. Your objective is to have the product available each time it is on the menu. This is what propels average daily participation and keeps customers returning. It is important to ensure that the product is available if it is on the menu. These products are subject

to tremendous variation in quality among brands. The increased use of processed products is making food more complex. As food becomes more complex and processed, more effort has to be devoted to quality control.

It is important to accurately predict and estimate the goods, products, and/or services needed in specified areas for the coming year. This is known as forecasting and is discussed in the section entitled, Forecasting

## Forecasting

**F**orecasting is the process of analyzing current and historical data to determine future trends. In the case of SNPs, forecasting involves predicting and estimating the goods, products, and/or services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement plans to evolve each fiscal year.

The **Average Daily Participation (ADP)** for the National School Lunch and School Breakfast Programs are based on attendance rather than enrollment. Calculating ADP in this manner is considered to be fairer to schools as it does not include children that do not eat lunch/breakfast (e.g., part-day kindergarteners) in the calculation.

Regardless of the ADP of the district, accurate forecasting provides critical and valuable information. This information benefits both the school district and potential distributors who are considering bidding on the items in the solicitation document.

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### Velocity Report

A **velocity report** provides the quantity, the date of purchase, and other valuable information about each item received. The report can serve as a tool for the SFA staff when forecasting the needs of the district and documents bid integrity. Upon request, the distributor can generate a velocity report for products purchased during a specific time period. Many distributors have online ordering systems that allow the SFA to produce a velocity report at any time.

With the ease in which products are now electronically tracked, distributors have the ability to quickly review what they have sold in the past against what was stated as a quantity. After one year's history, it is easy to see whether or not the quantities were accurately calculated estimates. If it is discovered that the quantities previously listed have not been closely met, distributors will know that quantities are inaccurate, and may result in significantly increased prices.

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### Forecasting USDA Foods

Forecasting includes contemplating the use of USDA Foods. Many school districts have the ability to purchase ready-to-use end products made from USDA Foods. Ready-to-use end products allow for the use of USDA Foods in the final production of many mainstay menu items. By utilizing USDA Foods in the final product, there can be a cost savings to the district for high quality products. Check with the state food distribution agency to determine what is allowed before entering into a contract. Clarify state limitations on pricing structures and method of distribution of these items.

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### Bid Integrity

The integrity of a bid is strengthened when time is spent developing good forecasts. Distributors can be confident that the items specified on the bid in the quantities listed are accurate to the

best of the district's ability. With this knowledge, the distributor is willing to provide their most competitive pricing. Adequate forecasting is critical not only between district and distributor, but further along the supply chain to the manufacturer of the product. A manufacturer or distributor does not want to maintain too much inventory for fear the inventory will expire prior to the district being able to utilize the quantities on hand.

Establishing valid forecasts requires reflection on the past, consideration of present conditions, and speculation as to the future. Some considerations include: student preferences; revenue from the previous year; the current inventory; the upcoming year's menu; the likely cost of labor, goods, products, or services in the coming year (season); the number and ages of the students being served throughout the school year; and relevance of the last solicitation document. Below are some practices that can assist in accurately forecasting items for solicitation.

## Forecasting

- Past
- Present
- Future
- Realistic Expectations

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### The Past

- Has the serving of this item been increasing, decreasing, or remaining the same?
- What are the revenues from the past year?

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### The Present

- In what meal service is the item menued?
- For what grade levels is the item menued?
- Is the price of this item cost effective, including the impact of utility and waste removal costs?
- How often does the item appear on the menu?
- Is the menuing of this item contingent on the availability of USDA Foods?
- What is the current inventory?
- Is there sufficient storage space including, space for recyclables?

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## The Future

- What is the upcoming year's menu?
- Will the item continue to be menued to the same clientele and in the same frequency as it is currently?
- Is the product still going to be available in the manufacturer's portfolio?
- Are there any changes in menu or meal requirements that no longer allow this item to be served in the same manner as it has been previously? Will this force the item to be menued to different grade levels?
- Is the item still affordable?
- Is it necessary to divert or order USDA Foods to produce this item?
- What is the estimated dollar value of procurements for the upcoming year?

**Forecast items accurately.** The SFA staff should be prepared to provide the state agency with some detail on how the products and quantity were projected.

**Answer the past, present, and future questions.** The answers to these questions will provide a more reliable forecast to ensure only the necessary purchases are made in accurate quantities.

**Utilize cycle menus.** The inclusion of cycle menus contributes to a more efficient procurement process. Cycle menus provide the opportunity to analyze menu items and determine similarities among recipes. Identifying similar menu items for different recipes can lead to a reduction of inventory and a cost savings. School nutrition staff should become familiar with the standardized recipes and learn preparation efficiencies for producing a quality product.

**Review production records.** Production records log the daily amounts served and how much of the prepared food remains after the product is served. Production records are used for future meal planning as well as for forecasting quantities for purchasing. It is important to review past production records for each menu item. This will help determine the popularity of the item.

**Conduct surveys or taste panels to determine customer satisfaction.** The survey or taste panel can include current menu items and potential menu items for consideration.

**Ask the distributor to generate a velocity report for products purchased during a specific time period.** The report can serve as a tool for the SFA staff when forecasting the needs of the district and documenting bid integrity.

**Record the current inventory.** Conducting inventory before creating the solicitation document will help to ensure that only necessary products are ordered.

**Calculate the amount of product to purchases and number of servings prepare.** The As Purchased (AP) weight is the amount of product to be purchased. The Edible Portion (EP) weight is the amount of product that can be consumed. The AP weight is greater than the EP weight. Calculation of the AP quantity allows the SFA to purchase based on the anticipated number of

servings of the item. This means that the calculation provides an estimated quantity of food needed to be purchased to meet the anticipated number of servings to meet the portion size. For additional information, refer to the USDA Food Buying Guide (FBG) Calculator which can be accessed at: <http://fbg.nfsmi.org/>. It is important to remember to use standardized recipes for accurate servings, portion sizes and nutrition information applicable to your specific operation.

**Complete an electronic monthly grid with estimates.** Depending on the size of the district and the number of different items being procured, it may be necessary to develop specific product forecast electronic forms to meet a district's needs.

Include the school's name, product specification, case size, and date. Using the USDA FBG Calculator, determine the number of servings and calculate the amount to purchase for each month during the duration of the bid period. Total the calculations for each month to determine the annual product usage. Use past production records and future plans for menu planning and to forecast the quantity of food needed prior to issuing a solicitation document. Consider summer recesses, holidays, and other school breaks that would affect forecasts.

*A Sample Product Forecast Template* has been provided in this document as an example.

## Sample Product Forecast Template

School Name:	Advanced Learning Center
Product Name and Specification:	10" Whole Wheat Spaghetti
Case Size:	2/10 lb. bags
FBG:	10 – ½ cup servings per 1 pound
Edible Portions Servings per Case:	200 per case
Date:	January of preceding school year

Number of Servings per Month Edible Portion		Number of Cases per Month As Purchased	
August	200	August	1
September	600	September	3
October	1,600	October	8
November	1,000	November	5
December	800	December	4
January	2,000	January	10
February	1,000	February	5
March	800	March	4
April	300	April	3
May	200	May	1
June	100	June	1
July	0	July	0
<b>Total</b>	<b>8,600</b>	<b>Total</b>	<b>45</b>

### Realistic Expectations

It is unrealistic to expect the awarded distributor or manufacturer to have products and quantities specific to your district readily available in their inventory. This becomes even more critical when forecasts are not available for **proprietary products**, those products manufactured strictly for your program, or are unique to that manufacturer.

Forecasting a minimum of six weeks in advance is not a federal regulation but is considered a good practice. This will allow the stakeholders of the supply chain to adequately prepare and provide the anticipated quantity. Lead time is discussed in the section entitled, Solicitation Lead Time.





## Solicitation Lead Time

**A** solicitation is a document used by the SFA to acquire goods, products, and/or services. Solicitations must incorporate a clear and accurate description of the technical requirements for the material, product, and/or service to be procured. Solicitations must be publicly announced.

**Before** procuring a product, the SFA staff will need to make some decisions. Should the product be offered at one school or district wide? When will the product be placed on the menu? What quantity should be purchased? What will the SFA staff do to market the new product? How much time will the distributor need to deliver the product to the district? If the solicitation document needs to be reviewed by the state agency, how much lead time is required for this review?

Receiving a product, especially a new product, can impact the entire food supply chain. School districts, distributors, and manufacturers may have different timelines for procuring a product, but the overall process is very similar. **Lead time** is the amount of time necessary for the distributor to prepare and deliver the product to the district. Due to the vast amount of responsibilities of all the stakeholders, the solicitation process may take up to a year to complete.

Although this is not a federal requirement, potential respondents should attend a pre-solicitation conference and be given a minimum of six weeks before the solicitation opening to prepare their proposal. It is unrealistic to ask vendors to submit a response to the solicitation document with less than a six-week return time, and 8-12 week lead time constitutes best practice. The solicitation document should include the site location where solicitation responses will be delivered, the time the solicitation response must be received, and the due date for accepting solicitation responses.

Generally, the more lead time you can provide a distributor, the most cost-effective price for the product. Since different product or service categories (e.g., milk and milk products, fresh produce, large equipment, accountant services, etc.) require differing amounts of preparation and lead time, a detailed procuring timeline is usually made for each product or service category.

A longer lead time may be necessary for special ordered and fresh products. The following must be taken into consideration when determining the due date:

- the complexity of the solicitation requirements;
- the time needed for pre-solicitation/award meetings, site visits, etc.;
- federal, state, and district due date requirements.

Remember, stakeholders will need to coordinate the increased volume and delivery logistics of purchases. This may require an additional six weeks. Base the delivery schedule on the mutual agreement and consolidated order between all concerned. Advance, detailed planning is considered a good practice and will be rewarded with fewer purchasing and delivery errors and fewer problems to manage.

It also is important to allow adequate lead time between the solicitation award and the first delivery. Once a contract has been properly procured, the next step is to contact the appropriate party in the food supply chain, the distributor, and place an order.

The distributor develops routes and schedules and coordinates for trucks and personnel to be available to deliver the products. To initiate the supply side of the contract, the distributor must determine if the item is already in stock and part of their inventory. If not, a product code number must be developed and accepted into their inventory and ordering system.

If a new code number needs to be developed, this item is a new item. The first step for the distributor is to check to see if it is from a company with whom they currently do business. If not, they must establish credit with this company, determine minimum order quantities, determine delivery frequency, and any other issue unique to this manufacturer. This all takes time which is why adequate lead time is vital.

The solicitation must be advertised sufficiently in advance of the due date to permit potential respondents (vendors/bidders) the opportunity to obtain the solicitation document and prepare a response. Check with your state agency and become familiar with additional state rules and policies. Refer to *Procuring Timeline Example* to see a model of a procurement timeline.

## Procuring Timeline Example

Month(s)	Days	Tasks
September-August	300 days or 360 days	Begin preparing for procuring items. Planning approximately one year in advance provides sufficient time for preparation from all parties in the food chain.
September-December	60 days	Write specifications, project USDA Foods needs, and conduct screen test. Remember fall and winter breaks may impact timeline.
January	30 days	Develop solicitation document. Include pertinent information about the district; date and time for pre-solicitation conference and solicitation submission; scope of work; time period for the solicitation; any common legalities; ability for price escalations; name brand items; substitutions; discounts, rebates, and applicable credits; communication instructions with the district prior to the closing date; solicitation evaluation criteria. Plan accordingly to have solicitation document and agenda item at school board meeting. Modify proposal accordingly based on legal counsel's directives. Remember fall and winter breaks may impact timeline.
February-March	60 days	Propose solicitation document to school board. Follow internal procedures. Communicate to distributors and manufacturer and publicly announce the solicitation. Publicizes the solicitation document. Allow a minimum of two weeks for vendors to respond.  Evaluate solicitations based on pre-established criteria and select vendors.
April- May	60 days	Receive School Board approval for the selection of vendor.  Provide information to distributor and/or manufacturer. Allow longer time for specialty items and name brand items.
June	120 days or 180 days	Communicate with stakeholders, determine delivery dates, and discuss school opening logistics.
July, August		Receive product for upcoming school year.

The solicitation document is the vehicle by which the SFA staff articulates to the public its need for goods, products, and/or services. Solicitations are discussed in the section entitled, Solicitation for Goods, Products, and/or Services.



## Solicitation for Goods, Products, and/or Services

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### Solicitations

- Under the SNP, solicitation documents are required for every procurement of a good or service, regardless of whether the procurement falls under or over the small purchase threshold.
- While the format and complexity can vary depending on the procurement method chosen, all solicitation documents should contain enough information to permit the potential respondent (vendor/bidder) to submit an adequate response.
- Solicitations must describe how technical and cost factors will be considered in making the final determination (*lends itself to an RFP*).
- Solicitations must be measured and documented to reflect why one company's response to a particular criterion is better than another (*lends itself to an RFP*).
- The solicitation document provides procedural guidance on how to submit a solicitation or proposal response and also allows for detailed descriptions regarding the required elements.

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### Writing Solicitations

- All solicitations and resulting cost reimbursable contracts, including contracts with cost reimbursable provisions (i.e. contracts that provide for payment of allowable incurred costs to the extent prescribed in the contract) must include provisions.
- The SFA can only pay allowable costs that are the net of all discounts, rebates, and other applicable credits from its nonprofit school nutrition account.
- The respondents will be required to identify those costs as well as discounts, rebates, and other applicable credits on all invoices.
- Documentation of these costs and discounts, rebates, and other applicable credits will be required to be available for review by the SFA, state agency, or FNS; and failure to comply with program regulations could require a district to utilize general funds to cover some or all of the costs of the contract.

Communicating the district's expectations to prospective respondents is advantageous to all parties involved. Respondents can determine if they can meet the district's needs by reviewing the solicitation. Solicitations are discussed in the section entitled, Types of Solicitation.



## Types of Solicitation

Leaving less opportunity for guesswork allows respondents to consider all the factors they will use to determine the solicitation price. Below are types of solicitation documents and a description of the advantages and disadvantages of each.

### Types of Solicitation

- Line Item Solicitation
- Market Basket Solicitation/Product Groupings Bids (Lot)
- All or Nothing Solicitation (One Prime Distributor)

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#### Line Item Solicitation

Line item solicitation is when individual items are solicited and the vendor can bid on each item accordingly.

The advantages of this type of solicitation are:

- the district may receive the best price for an individual item, and
- the respondent that has the lowest price is awarded that item.

The disadvantages of this type of solicitation are:

- you will do business with many suppliers,
- you have to remember what products are purchased from which supplier,
- on a solicitation with dozens or hundreds of products, it is possible that a respondent may only be awarded one item,
- you may not be able to meet distributor minimums for deliveries if distributor is only awarded a few items,
- it may limit the number of respondents because they are not willing to handle only a few items, and
- it may actually cost you more in the long run.

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### **Market Basket Solicitation/Product Groupings Solicitation (Lot)**

Some districts and cooperatives release more than one solicitation document for food items. They may release separate solicitations by grouping similar items (e.g., frozen food, canned foods, snacks and beverages, produce, and dairy). The vendor submits a solicitation for the entire group (lot) of items. A decision may be made to award all or none of the products to the selected vendor.

Sometimes solicitation documents released from a cooperative or a medium to large sized school district contain so many line items that the solicitations are awarded in lots or product groupings. In this scenario, the mathematical calculations are determined for each individual product grouping or lot, as it is sometimes called; and the entire lot is awarded to one supplier.

The advantages of this type of solicitation are:

- it potentially allows more respondents (vendors/bidders),
- volumes for the entire lot tend to be large so pricing is strong,
- it still limits the total number of suppliers to a manageable level, and
- it provides the opportunity to purchase specialty items.

The disadvantages of this type of solicitation are:

- some suppliers may not be able to supply all the items in a lot, and
- some lots may not be a large enough volume to warrant sufficient competition.

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### **All or Nothing Solicitation (One Prime Distributor)**

When awarding a solicitation as an all or nothing bid, all estimated quantities and pricing are multiplied to determine the price for each item. The total of these estimations are added together to determine the total price bid by each respondent. The respondent with the total lowest price is awarded the contract.

The advantages of this type of solicitation are:

- the district only deals with one supplier,
- orders are placed with one supplier,
- orders are delivered by one supplier, and
- orders are invoiced by one supplier.



The disadvantages of this type of solicitation are:

- some items may cost more since they are mixed together with the calculations for all products,
- the number of distributors who select to respond may be reduced, and
- it may limit the availability of specific brands.

A solicitation document contains key elements identifying the respondents' obligations and all other factors to be used in evaluating the solicitation responses or proposals. These elements are discussed in the section entitled, Elements of a Solicitation Document Template.



## Elements of a Solicitation Document Template

The solicitation document contains the: who, what, when, where, and how of the contract to all potential respondents. Many solicitations include a Special Conditions section.

The more information the respondents have on the terms and conditions of the contract, the more thought they can provide to exacting their costs for doing business. The solicitation document must identify all the elements the respondents must fulfill and all other factors to be used in evaluating the solicitation responses or proposals. These elements are discussed in more detail in the succeeding paragraphs.

### Elements of a Solicitation Document Template

- General Information
- Information about the District
- Contract Type
- General Descriptions of Goods and Services
- Procedural Issues
- Technical Requirements
- Evaluation Criteria

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### General Information

The solicitation document is the best opportunity for clearly defining your expectations on how:

- business will be conducted,
- disputes are handled,
- invoicing is handled,
- products specified are determined,
- substitutes (if allowed) can be made, and
- items unique to the contract will be identified.

Check with your district for the minimum requirements necessary for your solicitation documents. A good practice is to contact neighboring school districts for samples of their solicitation documents.

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### Information about the District

Provide a lead paragraph about the district. Include a list of the school nutrition programs the district participates in and the approximate dates they are operated, the approximate number of annual meals served, a copy of a cycle menu, number of schools, and a brief description of the trained professionals on the SFA staff.

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### Contract Type

It is important to identify the type of procurement and resulting contract (e.g., RFP, IFB, fixed fee, or fixed price). All of these procurement methods will be discussed throughout this document.

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### General Descriptions of Goods and Services

The general descriptions of goods and services to be required may include general products or services, such as frozen entrees, canned fruits and vegetables, and paper goods. Clear, concise specifications describe the required characteristics of the goods and/or services. When one known brand name or product is used as the quality standard, regulations require the solicitation document to say brand name or preapproved equal. It is also important to identify any restrictions such as delivery times and frequency, dates, requirements for delivery (presence of stairs, truck access, etc.), dollar value for each delivery drop, and the type of storage available.

### Procedural Issues

- Pre-Solicitation Meeting
- Date and Time for Solicitation Submission
- Instructions for Submitting the Solicitation Package
- Time Period for the Contract
- Proposal Withdraw
- Solicitation Protest Procedures
- Communicating Instructions with the District Prior to the Closing Date
- Cancellation Clause

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### **Pre-Solicitation Meeting**

The pre-solicitation meeting gives potential respondents the opportunity to ask questions of the school nutrition director specific to the requirements of the solicitation. The pre-solicitation meeting is held after the solicitation has been published, but before the closing date. This is an open forum meeting so all participants can have questions answered, and all participants hear the same answers. It is important to include in the public announcement the date, time, and location of the pre-solicitation meeting.

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### **Date and Time for Solicitation Submission**

Allow ample time for the respondents to research, prepare, and return solicitations responses prior to the due date; allowing too little time can create a barrier to competition.

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### **Instructions for Submitting the Solicitation Package**

Districts have different requirements. Providing a bulleted list or checklist will assist potential respondents in providing the required information.

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### **Time Period for the Contract**

It is important to identify the length of the contract and the possibility of renewals. This will allow vendors to estimate the volume, inventory, and other labor-related factors. Some states allow a current solicitation to be renewed for a maximum of four years. Check with your state agency in advance to determine what is applicable for your program.

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### **Proposal Withdraw**

Establish procedures for respondents to withdraw proposals. Identify a contact person and the last day the solicitation response can be withdrawn.

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### **Solicitation Protest Procedures**

School districts usually have pre-established procedures for a vendor to contest the award decision. Outline the procedures or direct the respondents on how to locate the procedures.

An interested party may protest a solicitation for the procurement of property or services; the cancellation of such a solicitation or other request; an award or proposed award of such a contract; and a termination of such a contract, if the protest alleges that the termination was based on improprieties in the award of the contract. Districts must have protest procedures in place to handle and resolve disputes relating to their procurements and shall, in all instances, disclose information regarding the protest to the awarding agency.

USDA FNS will accept a solicitation protest from a protestor only if the following conditions have been met:

- The contract was made in connection with child nutrition programs.
- The protestor has exhausted all administrative remedies with the district before pursuing the protest with FNS.
- Violations of federal law or regulations and the standards of this section (violations of state or local law will be under the jurisdiction of state or local authorities) exist.
- Violation of a district's protest procedures exists for failure to review a complaint or protest. Protests received by the federal agency other than those specified above will be referred to the district.

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### Communicating Instructions with the District Prior to the Closing Date

After or instead of a pre-solicitation meeting, some districts choose to have a forum whereby questions can be asked about the solicitation. In this situation, potential respondents enroll in the process and have the ability to ask questions and view answers to all respondents' questions on a secure website. Determine in advance how and to whom to submit any clarifying questions and how clarifying questions will be responded to for all parties.

**Note:** These clarification procedures cannot be used to remedy a major (material) defect in the solicitation document; a solicitation document with a material defect must be withdrawn, corrected, and re-announced.

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### Cancellation Clause

Communicate your cancellation policy to the potential respondents. Include quantifiers for cancellation and the number of days notification required for the contract to be cancelled. SFAs should include provisions in the solicitation document to terminate for cause or convenience within a specified time period upon providing written notification.

### Technical Requirements

- Respondent's Responsibilities
- Rebates
- Substitutions
- Price Escalations
- Common Legalities
- Code of Conduct
- Required Forms and Certifications
- Evaluation Criteria

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## Respondent's Responsibilities

Prior to being considered for an award a respondent must first demonstrate that they are responsible by providing information on experience and past performance. To be considered responsible, a respondent must:

- be capable of performing successfully under the terms and conditions of the contract;
- clearly indicate compliance without material deviation from the solicitation's terms and conditions; and
- possess, at the time of contract award, the experience, facilities, reputation, financial resources, and other factors necessary to fulfill the terms of the contract successfully.

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## Rebates

**Rebates** are monetary returns. The velocity report obtained from the distributor will identify the quantity of product delivered for a specific time period. It may be necessary for the school district staff to submit the required manufacturer's documentation. The rebate is deposited in the school nutrition account according to district procedures. Solicitations that result in a cost reimbursable contract or contract that includes cost reimbursable provisions must require the return of all rebates, discounts, and other applicable credits.

The regulations require vendors under cost reimbursable contracts to provide sufficient information to permit the SFA to identify allowable and unallowable costs, as well as the amount of all such discounts, rebates, and other applicable credits on invoices and bills presented for payment to the SFA. (7 CFR 210.21(f), 215.14a (d) and 220.16(e)). For additional information refer to: USDA FNS (April 5, 2011) Memo Code: SP 01-2011 Revised. Reaffirming the Requirement that School Food Authorities Comply with Federal Regulations Affecting Rebates, Discounts, and Other Applicable Credits in All Cost Reimbursable Contracts which can be accessed at: [http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP01-2011\\_osr.pdf](http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP01-2011_osr.pdf).

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## Substitutions

Establish procedures in advance for delivering substitute items. Communicating the substitution procedures in advance will allow vendors to submit a more accurate quote for the products and will prevent items from being returned to vendors.

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## Price Escalations

In general contract terms, an **escalator/de-escalator clause** or **market-based pricing** is a predetermined provision in a contract stipulating specific conditions for an increase or decrease in price. If such provisions are used they must tie price changes to an external, market accepted, verifier (i.e. an index).

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### Common Legalities

Federal procurement regulations do not restrict the length of a contract unless it is for the services of a food service management company. State and local jurisdictions may have more stringent contract length stipulations. The federal procurement regulations and program specific regulations have provisions that must be provided in both the solicitation document and resulting contract. Remember to include language pertaining to a drug-free work place, debarment, and Equal Employment Opportunity. It is the responsibility of the respondent to submit a solicitation response with the necessary forms and certifications that complies with federal, state, county, local, and school district regulations. Check with your state agency for specific prototype forms required to complete the solicitation process.

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### Code of Conduct

Districts will maintain a written code of conduct governing the performance of their employees engaged in the award and administration of contracts. A **code of conduct** is a set of rules outlining the responsibilities of, or proper practices for, an individual or organization. The SFA must have a code of conduct governing the performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by FNS program funds. All SFAs must have a code of procurement Standards of Conduct, as required by 7 CFR Part 3016.36(b) (3).

- The code of conduct can be a stand-alone document, but it is often a part of the SFA's procurement plan.
- The code of conduct must state specific guidelines and limitations for an employee's actions during the procurement process. It also must be especially clear about the need for employees to avoid real or perceived conflicts of interest in all procurement actions.
- The perception of a conflict of interest, even if none actually exists, still brings the integrity of the SFA's procurement process into question.
- Professional, social, and personal activities and actions that compromise the programs' integrity must be avoided at all times.

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### Required Forms and Certifications

A checklist developed by the SFA staff will assist potential respondents when replying to the solicitation. The checklist will also assist in the review process. Here is an example of a respondent's solicitation checklist.



### **Respondent's Solicitation Checklist—Example**

Please complete and return the following information:

- The solicitation document
- Agreement form
- Company contacts (name, email, mailing address, phone, fax)
- A copy of Hazardous Analysis Critical Control Point ( HACCP) program
- Product recall plan
- Certification statements:
  - Code of conduct
  - Debarment and suspension
  - Lobbying
  - Drug-free work environment
  - Equal Opportunity Employment Act of 1975 statement
  - Employment verification

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### **Evaluation Criteria**

Determine in advance the criteria for evaluating the solicitations. Include the evaluation criteria in the solicitation document.

Product specifications are used to avoid confusion and ensure that SNPs receive the items they want when they issue a solicitation document. See the section entitled, Product Specifications for additional information.



## Product Specification

**A specification** is a concise statement of a set of requirements to be satisfied by a product, material, and/or process. Some specifications are very brief, while others may be quite extensive. It is important to develop specifications that are not overly restrictive to competition. Specifying a brand name only product instead of allowing a preapproved equal product to be offered restricts free and open competition.

Writing specifications can be difficult and time consuming because the descriptions are often long and very detailed. But in some cases, the specification can be limited to only those characteristics that are essential for communicating with the supplier, such as the **Standard of Identity (SOI)**, quality, grade, and size. Most single-ingredient foods, such as fresh produce or graded meats, often only need a brief specification.

Remember to use common language of the industry when developing the product specifications. It is important to provide a clear product description. The clearer the specification, the more likely you will receive the anticipated product. Refer to the following list when developing product specifications.

### Product Specification Information

- Name of Product
- Description of the Product
- Case Pack and Weight
- Minimum and Maximum Size and Pieces
- Main Ingredient(s)
- Other Product Ingredients
- Prohibited Ingredients
- Nutritional Standards
- Unit on Which Award is Made
- Quality Indicators
- Meal Pattern Requirements/Child Nutrition (CN) Label
- Run and Code Numbers
- Mock Product Label Example

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### **Name of the Product**

Developing specifications for multi-ingredient, processed food products is more involved. Selecting a new product may require research on a brand name, industry standards for manufacturing, or quality indicators for the product. It might also be necessary to obtain samples and taste test the product before adding it to a solicitation document.

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### **Description of the Product**

A vendor will need a description of the product. The product description must clearly indicate that respondents may quote on brand name or preapproved equal products to ensure maximum free and open competition. For example, if a fish product is listed, the type of fish would need to be identified (e.g., tilapia), the cut of fish (e.g., filet), and the portion size, the precooked weight, and whether it is frozen, etc.

When specifying a brand, in addition to the above information, include: the manufacturer's name, the manufacturer's name for the product (e.g. rounds, triangles, and dips), the manufacturer's code number, and the manufacturer's pack size.

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### **Case Pack and Weight**

How should the item be packaged, and how big are the cases? This can be as simple as 6/#10 cans, or 4/5# loaves, or not to exceed 25#. Some other example descriptions may include: individually wrapped, 48 to the case, 72 to the case, or 96 to the case. Cases cannot exceed 30 pounds.

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### **Minimum and Maximum Size and Pieces**

What is the minimum size of the product? What is the maximum size of the product? A possible description may include: each serving must weigh a minimum of 3.9 ounces and cannot exceed 4.1 ounces.

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### **Main Ingredient(s)**

What are the main ingredients? Some possible descriptions may include: pinto beans, black beans, or whole grain-rich tortilla.

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### **Other Product Ingredients**

What other ingredients can be included in the product? Some possible descriptions may include: whole-grain pasta, whole-wheat flour or product may include spices, emulsifiers, vegetable purees, and thickening agents.

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### Prohibited Ingredients

What ingredients are prohibited? When creating a specification indicate what ingredients are prohibited in the product (e.g., food additives, artificial colors and flavors, hydrogenated fat, Monosodium glutamate (MSG), and assorted allergens). USDA follows FDA standards and some states may have more stringent requirements. If there is ever a question about the ingredients of an item, the SFA staff should refer to an official ingredient label. Some possible descriptions may include: product cannot contain pork, fish by-products, MSG, soy derivatives, or food coloring.

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### Nutritional Standards

What are the nutritional standards for the product? Are there minimum or maximum nutrient or ingredient requirements or limitations? Some possible descriptions may include: pinto beans and black beans combined must provide a 1.5 ounce equivalent for the Meat/Meat Alternate, and the whole grain-rich tortilla must provide a 1.5 equivalent for the Grains component for the NSLP. Product must meet NSLP requirements.

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### Unit on which Award is Made

How will the SFA team determine which company is offering the best price for an acceptable product? How will the unit price be determined for an acceptable product? Some possible descriptions may include: by the case, by the serving size, or per pound.

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### Quality Indicators

What are some quality indicators for a particular product? Some food items are very basic and are either defined by their single-ingredient, such as iodized salt, or by their standard of identity. Standards of Identity for foods are federal requirements that define what a food product is, its name, and the ingredients that must or may be used in the manufacture of that food. SOIs protect consumers by ensuring labels accurately describe the products contained within the package. For example, an imitation spread cannot be called mayonnaise, and a non-dairy frozen dessert cannot be called ice cream. In the United States, SOIs are issued by the USDA, the Food Drug Administration, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. The specifications for single-ingredient items and items with SOIs may simply be written with only their pack size as a qualifying characteristic. Many times brands are not listed on the specification for single-ingredient or SOI items.

**Grade standards** are USDA quality standards and are based on measurable attributes that describe the value and utility of the products. U.S. Grade Standards provide a uniform language for describing the quality and condition for meat, poultry, fresh fruits and vegetables, and processed fruits and vegetables. While safety inspections are mandatory, the federal government does not require that all food products are graded.

Some states require grading, and many food processors participate in grading voluntarily because their customers list grade requirements in their specifications. Grade standards, such as USDA Prime and USDA Choice, are based on the product's taste, texture, and appearance.

The Agriculture Marketing Act authorizes USDA's Agricultural Marketing Service to provide a voluntary inspection and grading service for fruits and vegetables. This service has proved to be extremely valuable for purchasers of processed fruits and vegetables. Most processed fruits and vegetables that schools purchase are not graded by USDA, but processors base their packing on USDA grade standards. The standards provide the produce industry with uniform language for describing the quality and condition of commodities in the market place.

Due to the diversity in the nature of produce products, specific standards have been established for individual products. For example, the U.S. Standard for fresh apples is identified as U.S. Extra Fancy, U.S. Fancy, U.S. No. 1, U.S. Utility, or Combination grade. For fresh tomatoes off the vine, the U. S. Standard is U.S. No. 1 or U.S. No. 2. Including grade standards on the solicitation document specification ensures the quality of produce purchased will meet the needs of your school nutrition program. Some possible descriptions may include: Grade A, Prime, Choice, or Fancy. Additional examples include private label or manufacturer's brands are subject to internal quality screening.

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### **Meal Pattern Requirements/Child Nutrition (CN) Label**

Does the product contain certain meal components? Does the product have a CN label? The existence of a CN label on a product provides School Food Authorities and other FNS meal program operators with a guarantee that the product contributes to the meal pattern requirements as printed on the label. For additional information on the CN label refer to the Child Nutrition Labeling Program section of this resource. For an example of a product label description see the *Mock Bean Burrito Product Description Example*.

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### **Run and Code Numbers**

The production **run number** is the code that identifies the production plant, the date, the shift, and the production line that manufactured the product. This number is not printed on the label, but rather it is stamped on the case at the time the product is manufactured.

In addition to product specifications and descriptions, food products are issued codes and labels for identification purposes. The product code number is assigned by the manufacturer. This number can be used to identify the product that was preapproved under the bid or associated with the price quote.

Each school district has a system for communicating the brand and code numbers of products preapproved during the contract award. When school districts do not put brands and code numbers on their resulting contract, the site receiver must check the products against the specifications. The most effective approach to improving the receiving process is awarding the brand and code number in the resulting contract.

## Mock Bean Burrito Product Description Example

**Description of the Product:** two-bean burrito on a whole grain-rich tortilla

**Case Pack/Weight:** 72 to the case; paper between layer; bulk case cannot exceed 22 pounds in total weight

**Minimum and Maximum Size and Pieces:** 3.9 ounces and cannot exceed 4.1 ounces

**Main Ingredient(s):** pinto beans, black beans, and an individual whole grain-rich tortilla

**Other Product Ingredients:** product may include spices, emulsifiers, vegetable purees, and thickening agents

**Prohibited Ingredients:** product cannot contain dairy, beef, chicken, pork, fish by-products, *trans* fats, or monosodium glutamate, (MSG)

**Nutritional Standards:** pinto beans and black beans combined must provide a 1 ounce equivalent for the Meat/Meat Alternate, and the whole grain-rich tortilla must provide a 1 equivalent for the Grains component for the National School Lunch Program; product must be 10% or less calories from fat and may not exceed \_\_\_\_\_ mg sodium.

**Meal Pattern Requirements/Child Nutrition (CN) Label:** CN label preferred or product must meet 1 ounce equivalent for the Meat/Meat Alternate, and the whole grain-rich tortilla must provide a 1 equivalent for the Grains component for the National School Lunch Program.

**Unit on Which Award is Made:** based on unit price for acceptable products

**Quality Indicators:** private label or manufacturer's brands are subject to internal quality screening; golden brown color; ability to hold in warming cabinet for up to one hour

Products produced in accordance with the Child Nutrition Labeling Program are generally purchased by providers for USDA meal programs and are discussed in the section entitled, Child Nutrition Labeling Program.





## Child Nutrition Labeling Program

The USDA **Child Nutrition Labeling Program** provides food manufacturers the option to include a standardized food crediting statement on their product label. Labels must be authorized by FNS prior to use, and manufacturers must have quality control procedures and inspection oversight that meet FNS requirements. Companies that state a product meets a meal pattern component and do not include an authentic CN label must be evaluated using the criteria to credit other non-CN Label products. For additional CN Labeling information can be accessed at: <http://www.fns.usda.gov/cnd/cnlabeling/foodmanufacturers.htm>

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### How does the program work?

The program requires an evaluation of a product's formulation by FNS to determine its contribution toward the meal pattern requirements. It allows manufacturers to state this contribution on their labels. The program provides a warranty against audit claims for purchasers of CN labeled products.

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### What products can include the CN label?

Products eligible for CN labels contribute to the Meat/Meat Alternate component of the meal pattern requirements. Examples of these products include but are not limited to beef patties, frozen pizzas, burritos, egg rolls, and breaded fish portions. Juice drink and juice drink products which contain at least 50 percent full-strength juice by volume may also contain CN Labels. This includes such products as grape drink, fruit punch, and fruit juice bars.

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### Are manufacturers required to include a CN label on their products?

There is no federal requirement that forces companies to make or purchase products with a CN label. Purchasing decisions are left at the local level. If a product with a CN label is desired, this must be clearly stated in purchasing specifications. A CN label:

- identifies the contribution of a product toward the meal pattern requirements and serves as protection from claims about a product;
- provides a warranty against audit claims if the CN labeled product is used in accordance with the manufacturer's directions; and
- simplifies cost comparison of similar products.

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### Are products with a CN label more nutritious than similar non-CN labeled products?

A CN label does not indicate that the CN product is healthier or more nutritious than a similar non-CN labeled product. The CN credit statement declares the quantities of the creditable food(s) in a processed food. The quantity of creditable food is used to meet the meal pattern requirements.

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### Are CN label products more expensive than non-CN labeled products?

CN labeled products may cost more. Special labeling requirements, inspection costs, and extra staff costs to monitor quality control may be contributing factors in CN labeled products costing more than a similar non-CN labeled product. Keep in mind that cost comparison between two meat products should be based on the cost per serving of the specified contribution to the meal pattern requirements, not on the product cost per ounce or pound.

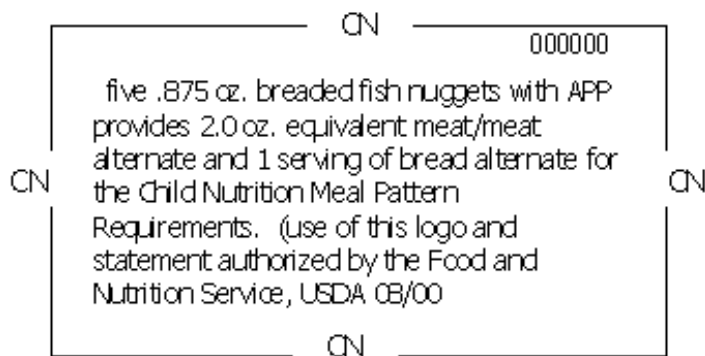
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### The CN labeled product

The CN labeled product will always contain the following:

- The CN logo, which has a distinctive border,
- The meal pattern contribution statement,
- A unique 6-digit product identification number (assigned by FNS) appearing in the upper right hand corner of the CN logo,
- The USDA/FNS authorization statement,
- The month and year of final FNS approval appearing at the end of the authorization statement, and
- The remaining required label features: product name, inspection legend, ingredient, statement, signature/address line, and net weight

### Example of a CN Label




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### Child Nutrition (CN) Label

- CN Labeling Website: <http://www.fns.usda.gov/cnd/cnlabeling/foodmanufacturers.htm>
- CN Labeling Policy regarding copied labels: [http://www.fns.usda.gov/cnd/cnlabeling/copying\\_labels.htm](http://www.fns.usda.gov/cnd/cnlabeling/copying_labels.htm)

- FAQ RE: Copies: [http://www.fns.usda.gov/cnd/cnlabeling/copying\\_labelsFAQs.htm](http://www.fns.usda.gov/cnd/cnlabeling/copying_labelsFAQs.htm)
- United States Department of Agriculture. (October 15, 2009). *Memorandum of Understanding (MOU) between The Department of Agriculture (USDA) Food and Nutrition Service (FNS), and the USDA Agricultural Marketing Service (AMS), and the*
- *USDA Food Safety and Inspection Service (FSIS), and the Department of Commerce (USDC), and the National Marine Fisheries Service (NMFS).*  
Retrieved from <http://www.fns.usda.gov/cnd/cnlabeling/default.htm>
- United States Department of Agriculture. *USDA policy memo.*  
Retrieved from [http://www.fns.usda.gov/cnd/cnlabeling/cnl\\_mou.pdf](http://www.fns.usda.gov/cnd/cnlabeling/cnl_mou.pdf)

It is important to allow adequate lead time for the arrival of CN Label products to coincide with menu usage. Having too little inventory, too much inventory or making last minute substitutions can be detrimental to inventory management. Inventory management has long been considered a critical component of a well-managed school nutrition program. To learn more about inventory management practices refer to the section entitled, Product Movement and Cost Management.



## Product Movement and Cost Management

A large part of a school district's budget is tied up in its inventory so managing this system efficiently is crucial for any school nutrition program. The balance between inventory and receiving food lies in the ability to control cost while adequately meeting the needs of the organization.

### Cost Management

- Inventory
- Assess Current Inventories and Orders on Hand
- Receiving Food

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### Inventory

A prime part of inventory management includes knowing the value of food and supplies on hand, whether at food preparation site or in a central warehouse facility. Effective inventory management is essential for managing and controlling cost. This includes effective receiving procedures, a system for accounting for items removed from inventory, effective counting of items in stock, and determining appropriate methods for calculating the financial value of the inventory.

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### Assess Current Inventories and Orders on Hand

Knowing the amount of inventory and orders on hand is not always as easy as it sounds. Inventory may be scattered throughout the district or in a number of district-owned warehouses. The school nutrition director may believe that he or she knows what should be in inventory, but projections of usage for a recent period may have been more or less than actual usage. If the director believes that the inventory of a particular item is lower than it actually is, he or she may spend money on items they don't need—money that could have been better used in other school food purchases. If the director believes there is more inventory on hand than there actually is, he or she may run out of an item that is critical to the school nutrition program.

For the busy school nutrition director to know what is on hand requires the district to have and use an up-to-date inventory tracking system. Clearly, having automated systems in place to assist in forecasting the district's needs will make this task much easier.



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## Receiving Food

The receiving process is challenging and will never be perfect. A well-trained staff enhances the receiving process and lessens the chance of a food safety breakdown.

The entire receiving process requires consistent control. Part of the consistent control is ensuring food products received are the food products that were ordered. These products should be received and stored properly to minimize any food safety hazards in accordance with your school nutrition operation's HACCP-based food safety plan. Whether food is stored in a warehouse or is delivered by the distributor via JIT delivery, the food must be received at the preparation site. Some best practice receiving tips include the following:

- provide a copy of the order to the person receiving the delivery,
- check the products delivered against the products ordered,
- use a two-wheel truck and/or carts to move products from the receiving dock,
- use the appropriate thermometer to ensure food safety,
- keep a clip board or other flat surface available to assist in the receiving process, and
- communicate product shortages and quality concerns to the delivery person and the appropriate SFA staff member.

For additional information see *Inventory Management and Reference Tracking Guide* which can be accessed at: [www.nfsmi.org/ResourceOverview.aspx?ID=431](http://www.nfsmi.org/ResourceOverview.aspx?ID=431).

An accurate solicitation document is critical to your program. Details regarding the solicitation document can be found in the section entitled, *Creating the Solicitation Document*.





## Creating the Solicitation Document

**B**efore creating the solicitation document review the following information to help ensure an accurate solicitation.

### Solicitation Document

- Using Common Denominator Units When Listing Products
- Unit of Measurement and Cost Per Serving
- Updating Quantities
- Addition of New Items
- Material Change

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### Using Common Denominator Units When Listing Products

Food is often more difficult to purchase than other items school districts may buy. Inconsistent packaging sizes add a different dimension to developing solicitations for food supplies. A size unit is a common denominator for all brands. In some cases, there may be two common denominators for the same product. Choose a unit that is large enough that a price carried to four decimals will register. The number of decimal places is a major consideration when the unit is less than a case.

Some examples of common denominator units of food are:

- cases,
- pounds,
- edible serving size, or
- a request for a CN label 2 oz. Meat/ Meat alternate product.

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### Unit of Measurement and Cost Per Serving

To compare prices, a unit of measure should be chosen that controls the cost per serving.

Give careful consideration to the unit of measurement in awarding an item. Asking for a pound price on a product usually makes good sense, but sometimes may be misleading. For example, sliced mozzarella cheese is sold by the pound per case. Using a pound as the common denominator unit of measurement will allow an easy calculation of determining the actual number of servings per pound.

Asking for per pound pricing on chicken nuggets might not yield comparable results. It is important to identify the product's meal pattern contribution. For example, Company A and Company B offers the exact same price for a 25 pound case of comparable chicken nuggets. A serving of chicken nuggets from Company A weighs 4 oz. a portion. A serving of chicken nuggets from Company B weighs 3 oz. a portion. In this example, the price per pound is exactly the same, yet would need more pounds of Company A's product to serve the same number of students. The unit of measurement for the pricing in this example would be price per edible serving.

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### Updating Quantities

A critical aspect of any solicitation document is updated and accurate quantities. These quantities are established in your forecasts; and although they cannot be guaranteed, these quantities should be estimates based on valid and current information.

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### Addition of New Items

Be sure to identify the process for adding new items in the solicitation document. A product new to a manufacturer but not new to the industry does not constitute a new item. New products developed after the award of the contract may be added to the contract. Only items not specified elsewhere in the contract may be considered a new item. Pricing will be subject to the terms and conditions outlined in the contract. Be aware that the addition of new items cannot materially change the procured contract between the SFA and vendor.

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### Material Change

A **material change** is a change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough that, had other respondents (vendor/bidder) known of these changes in advance, they may have bid differently and more competitively.

This means that when the SFA agrees to or allows a winning respondent to make changes to contract terms (including the terms of a contract renewal) that are materially inconsistent with the underlying solicitation document, the SFA has subverted free and open competition by denying all respondents the opportunity to compete under the same terms and conditions. In this situation the SFA must re-bid the contract.

School Food Authorities reach out to possible respondents by publicly announcing their solicitations. Details can be found in the section entitled, Solicitation Announcement.

## Solicitation Announcement

The content of the solicitation announcement should be sufficient enough in scope to allow respondents to identify:

- the general nature of the goods or services to be procured;
- the method of procurement that will be used [i.e., informal (the small purchase method) or formal (competitive sealed solicitation or competitive proposals)];
- how they can obtain the solicitation or more information and the due date for responses to the solicitation.

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### Preapproved Vendor Lists

Some SFAs may want to preapprove or prequalify responsible vendors during the pre-procurement planning process. Preapproved vendors are not required. It is important to be cautious when establishing preapproved vendor lists. Some state and local laws prohibit SFAs from using preapproved vendor lists. If SFAs are not careful in the way in which they preapprove vendors or use preapproved vendor lists, they can easily open themselves up to a solicitation protest.

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### Advertising the Solicitation

Many SFA staff post solicitation documents on their website. It is important to keep in mind that solicitations must be announced in ways that do not restrict free and open competition.

SFA staff may want to consider using more than one announcement method to reach the widest possible audience. With procurement methods, it is prohibited to restrict notification by using only direct mailings as this serves to limit free and open competition. Types of public announcement methods may include:

- state designated newspapers and trade periodicals,
- designated Internet sites,
- direct mailings to known vendors, and
- other print media that serves the business community and general public.

**Remember:** Providing ample time between the advertisement and date of submission may make the difference in receiving many effective responses versus a few ineffective responses. SFAs should be cognizant of holidays and not build in short timeframes that restrict competition. Requesting a short response time may lead to a solicitation protest if respondents believe the process eliminated competition. School Food Authorities may award different types of contracts. Details can be found in the section entitled Types of Contracts.



## Types of Contracts

Depending on the goods, products, and/or services different types of contracts may be awarded. An explanation of the types of contracts is listed below.

### Types of Contracts

- Fixed Price Contract or Fixed Fee Price Contract
- Fixed Price Contract with Economic Price Adjustment or Cost Plus Fixed Fee Contracts
- Cost Reimbursable Contract
- Fixed Price Contract with Prospective Price Redetermination

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#### Fixed Price Contract or Fixed Fee Price Contract

Fixed price or fixed fee means an agreed upon amount that is fixed at the inception of the contract. In some cases, a fixed price contract may contain an economic price adjustment tied to an appropriate index such as milk.

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#### Benefits of Fixed Price Contracts

A fixed price contract provides a stated price that is fixed without any upward or downward adjustment for the duration of the contract, including all renewal periods. Since the prices are firm and do not change, the distributor assumes greater risk the longer this type of pricing is in effect, and the price will generally be higher than a pricing system based on changing prices. A fixed price contract provides maximum incentives for a vendor to control costs and perform effectively and imposes the least administrative burden on the contracting parties. Competitive sealed solicitations (i.e., IFB) must result in a fixed price contract.

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#### Fixed Price Contract with Economic Price Adjustment or Cost Plus Fixed Fee Contracts

A cost plus fixed fee contract provides for the reimbursement of allowable costs plus the payment of a fixed fee to the vendor. This type of contract frequently appears in school nutrition solicitations as a cost plus fixed fee contract. This is an appropriate type of fixed price contract to use when market conditions are such that potential vendors are unwilling to commit to a fixed price for an extended period.

In contrast to the fixed price contract, a fixed price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified occurrence of specified contingencies such as adjustments based on **cost indexes** of labor or material. These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract. When using this type of contract, it is important to clearly state that price adjustments should reflect both increases and decreases in the identified index. Additional information on government types of contracts can be located at [https://www.acquisition.gov/far/html/Subpart%2016\\_2.html](https://www.acquisition.gov/far/html/Subpart%2016_2.html).

Price contracts with economic price adjustment and cost plus fixed fee contracts include fees that are fixed, documented, and cannot fluctuate based on volume. The fees are clearly defined in the contract and incidentals, such as promotion allowances, cash discounts, label allowances, rebates, applicable credits, and freight rates. These should be discussed and agreed upon before signing the contract.

Competitive proposals (e.g., RFP) can result in either a fixed price or cost reimbursable contract. The vendor should be prepared to provide supporting documentation for auditing purposes upon request from the SFA staff. The cost must be adequately documented for the vendor to receive reimbursement.

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### **Benefits of this type of contract**

In many cases vendors may be able to provide their customers with a more consistent product at a reduced cost for a longer term contract. Relating adjustments in a contract to an index or standard allows the SFA to ensure that increases or decreases under the contract are not without basis. For example, if fuel prices are drastically increasing, the index will reflect this.

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### **Cost Reimbursable Contract**

A cost reimbursable contract is a formal, legally enforceable contract that reimburses the vendor for costs incurred under the contract but does not provide for any other payment to the contractor, with or without a fixed fee. In a cost reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the vendor net of all discounts, rebates, and other applicable credits accruing to or received by the vendor. Additionally, this rule requires vendors to provide sufficient information to permit the SFA to identify allowable and unallowable costs and the amount of all such discounts, rebates, and credits on invoices and bills presented for payment to the SFA.

This type of contract is appropriate to use when uncertainties involved in a contract's performance will not allow costs to be estimated with enough accuracy to use fixed contract pricing. Cost reimbursable contracts frequently occur in the SNP as cost plus fixed fee contracts. Solicitations that result in a cost reimbursable contract or contract that includes cost reimbursable provisions must require the return of rebates, discounts, and other applicable credits.

The fixed fee component of the cost plus fixed fee contract does not represent the costs associated with the item and/or service being purchased. Rather, it represents the vendor's related costs, such as:

- storage and distribution,
- delivery of the products, and
- the vendor's profit for performing the services.

Provisions for changes to the fixed fee component must be identified in both the solicitation and the contract. For example, a fixed fee may be adjusted when tied to an appropriate index, as discussed in fixed price contract with economic price adjustment. If anything substantially changes the scope of work, there has been a material change to the contract—a new procurement must be undertaken. This type of contract cost method provides the vendor with only minimum incentives to control costs but may be appropriate when the work required under the contract presents too great a risk for the vendor to absorb.

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### **Prerequisites for the Use of Cost Reimbursable Contracts**

Certain conditions must always be met whenever the SFA staff is considering the use of a cost reimbursable contract.

- First, the potential vendor must have an accounting system that can accurately determine which costs are applicable to the contract.
- Second, the SFA must exercise appropriate oversight by conducting reviews of the vendor's cost records or by hiring an independent auditor to do so.

Such oversight provides the SFA staff with assurance that:

- only allowable net costs (costs net of discounts, rebates, and other applicable credits) are being charged to the nonprofit school nutrition account, and
- the vendor is using efficient business practices and has effective cost controls.

**Remember:** The SFA must retain control over the program and ensure that the vendor is meeting its contractual obligations for quality, price, and performance through proper contract administration.

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### **Fixed Price Contract with Prospective Price Redetermination**

A fixed price contract with prospective price redetermination provides for a fixed price for the initial contract period and prospective price redetermination at stated times during the contract or for subsequent periods of performance. These types of contracts are commonly referred to as Maximum Allowable Cost contracts.

Fixed price contracts offer the SFA staff the best protection against:

- escalating costs, and
- vendors who allow their costs to climb upward quickly after the award of a contract.

Generally, there is a fixed fee designed to cover all operational costs and any additional fees of the contract. The fixed fee is reconciled at the end of the year against actual cost, and the school is reimbursed any amount that was overpaid or is cleared of any amount that was over the fixed fee. USDA considers this type of contract to be a cost reimbursable contract because price is not actually fixed and fluctuates. The contract administrator ensures that contracts of this nature contain the required language regarding the return of discounts, rebates, and other applicable credits.

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### **An Important Point to Consider**

For all costs charged under the cost reimbursable part of a contract, the contract must require that the vendor comply with all applicable SNP, state, and local requirements, including:

- procurement requirements, and
- financial management requirements for determining the allowable costs.

The procurement and other financial requirements discussed in this document must be applied by any vendor that purchases on behalf of the SFA using nonprofit school nutrition account funds. The requirements discussed in this document pass down to any vendor employed by the SFA through the contract executed by the SFA and the vendor.

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### **Benefits of this type of contract**

A fixed price contract with prospective price redetermination may be used when it is possible to obtain a fair and reasonable firm fixed price for the initial term of the contract but not for subsequent periods of contract performance. With this type of contract, the initial fixed price is for the longest period possible, and price changes are based on measurable standards or indices. Indices are essentially published price guides and should be clearly identified in the solicitation and contract and also should be verifiable (e.g., publicly accessible).

Milk contracts provide a good example of this type of contract. A milk contract is a fixed price contract with adjustments based on independent market information on a set or predetermined schedule. The contract award is made for a set price. Each month, the advance price for skim



milk and butterfat is then used to adjust the price up or down based on the appropriate federal milk market order.

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**Why are cost plus percentage of cost contracts not allowed?**

The percentage markup is added to the cost of the product, which is not fixed but changes over the term of the contract. In this type of pricing structure the vendor is rewarded for increased costs, and therefore has no incentive to keep the prices low.

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**Is this a cost plus percentage of cost contract?**

SFA's contract with a vendor is fixed price for the products for the entire term (12 months) of the contract with a fixed fee for delivery and service expressed as a percentage of the product.

No, the contract is a fixed price for goods, products, and/or services with a service fee expressed as a percentage of the fixed cost. The vendor will receive a fixed price for the product and a distribution fee based upon the percentage of the fixed product cost. The price of the goods, products, and/or services does not change for the contract period. The distribution fee, in effect, will remain the same; and therefore, it is also fixed. The distributor only increases its revenue based upon the actions of the SFA (i.e., increased purchase volume) and not through its own actions (i.e., the purchase of higher priced product).

A thorough, well written contract is critical to ensuring that the SFA staff obtains what it needs. Details can be found in the section entitled, Contracts.



## Contracts

**A contract** is a formal, legally enforceable agreement between a buyer (client) and a seller (vendor) that establishes a legally binding obligation for the seller to furnish goods and/or services and for the buyer to compensate the seller. A contract must clearly and accurately describe the goods, products, and/or services to be delivered or performed and the terms and conditions of the agreement.

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### Contract Administration System

The contract administration system refers to the policies and procedures the (SFA) has in place to ensure that vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. In the case of SNPs, a contract is executed by the authorized representatives of the SFA and the vendor that calls for the provision of services, materials, supplies, or equipment in accordance with all conditions and specifications in the solicitation/proposal documents, for a price to be paid by the SFA prior to execution.

The SFA staff must ensure that the contract requirements mirror those found in the solicitation. Failure to ensure that the two documents resemble one another could create what is known as a material change. A material change to a procured contract may require a new solicitation. For example, a material change could result from the SFA negotiating a broader scope of work and, subsequently, an increased fee than what was outlined in the solicitation. A material change is often the grounds for a solicitation protest.

A written contract serves many purposes. These purposes have been identified below.

### Purpose of a Written Contract

- Solemnity of the Commitment
- Record of the Deal
- Dispute Resolution Mechanism
- Feasible and Economically Viable Litigation

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### **Solemnity of the Commitment**

First and foremost, a contract impresses upon the parties the solemnity of the occasion. It requires the parties to seriously consider the effects of their performance or nonperformance of themselves. Signing the contract is the formality that has the effect of convincing the parties of the importance of their commitments.

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### **Record of the Deal**

A contract is a record of the deal. Over time, especially when there is a dispute, parties tend to remember what is favorable to their position. The contract stands as an objective record of their intentions. The SFA staff must ensure that all provisions in the contract are not only well thought out but bear resemblance to the needs and requirements articulated in the solicitation.

Numerous laws require a written document to make a particular type of deal. Thus, a contract fulfills this written requirement.

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### **Dispute Resolution Mechanism**

A written contract serves as a dispute resolution mechanism. A good contract provides a dispute resolution mechanism for the times when communication breaks down. In one instance, the contract may provide a means for the cure of a breach. In another instance, the contract may provide for mediation or binding arbitration among the parties through an arbitration service.

In many cases, the SFA staff will list a hierarchy of documents by which to resolve contract dispute issues. This can be especially important in school nutrition related contracts in which the solicitation and contract are both very important documents that convey the need for goods, services, and management capabilities.

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### **Feasible and Economically Viable Litigation**

In case a dispute arises that the parties must litigate, a written contract should include clauses which make litigation feasible and economically viable. For example, without an appropriate clause, the prevailing party usually cannot recover attorney's fees. If attorney's fees exceed the amount of damages recoverable, there may be no incentive for the injured party to recover damages.

With an attorney's fees clause, the loser pays the prevailing attorney's fees, thus making litigation an important option. The existence of such a clause is often the only thing that makes litigation economically sound. It also has the preventative effect of compelling the parties to follow the contract because they know if one has a breach of contract the other has a viable means of recovery.

The *Basic Elements of a Contract Checklist* may serve as a model when developing a contract.

<b>Basic Elements of a Contract Checklist</b>	
<b>Element</b>	<b>Included</b>
Contract duration	
Identification of the parties in the contract	
Scope of work (i.e., a detailed description of duties to be performed, hours of work, performance descriptions, levels of performance, and required outcomes)	
Product specifications	
Type of contract (i.e., fixed price or cost reimbursable with fixed fee)	
Payments	
Contract renewal options, including terms, conditions, and (as applicable) provisions for price changes	
Contract modification and change procedures	
Default and breach of contract provisions, remedies, cancellation procedures, and penalties	
Required compliance certifications and sanctions for noncompliance	
Contract termination rights for cause and convenience	
Recordkeeping requirements	
The laws and regulations that govern the contract	
Requirements that all costs be the net of all discounts, rebates, and other applicable credits	
A clear methodology for tracking costs to ensure that they are the net of all discounts, rebates and other applicable credits	
Any sanitation and licensing requirements	
Professional certification requirements or minimum levels for required experience or education	

Contracts are awarded on the basis of the best overall value based on the elements of the solicitation document and are discussed in the section entitled, The Contract Award.



## The Contract Award

The contract award is the ultimate communication mechanism for all those involved in the supply chain to adequately execute their expertise. The award components can be included in the solicitation document, and their inclusion may be a requirement in some states.

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### Negotiation

#### RFP Negotiation

- Negotiation of Technical Proposals
- Negotiation of Cost Proposals
- Negotiation of Other Contract Terms
- Awarding the Contract

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#### Negotiation of Technical Proposals

The SFA staff should conduct negotiations with the companies that submitted the top ranked technical proposals to ensure that each of the technical proposals in this group fully meets the team's needs, even if the companies have proposed very different approaches to doing so.

During the negotiation, the SFA staff may discuss a list of features presented in the proposals received (in response to the criteria outlined in the RFP) with respondents who did not include some of those features in their proposals to see if those features could be available. The result would be a blend of the best, most desirable features from each respondent. The importance of each feature has to be weighted and all parties need to understand equally how these features will be weighted. Also, there should be some objective standards for balancing cost and importance.

At the end of its negotiation with top ranked respondents, the SFA staff must be sure, before opening cost proposals, that any of the companies whose cost proposals are opened could perform successfully and meet all of the technical needs. At this point, based on the negotiations between the SFA staff and the top ranked technical respondents, some of the companies may

decide to withdraw their proposals. This is perfectly acceptable, but the SFA must take care to document carefully the reasons for each company's withdrawal, in the event of a later protest or dispute.

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### Negotiation of the Cost Proposals

Once the SFA staff is satisfied that each of the remaining proposals would fully meet its technical needs, the SFA would open the companies' cost proposals and permit the companies to amend their cost proposals to reflect any changes resulting from the technical proposal negotiation phase.

When negotiating cost, some of the respondents may wish to further modify their technical proposals. This, too, is acceptable if the RFP made clear to all respondents that this was permitted. The SFA would then need to re-rank the remaining proposals.

**Remember:** The key is to ensure that all respondents have the same opportunity to negotiate.

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### Negotiation of Other Contract Terms

Once the SFA staff has completed the cost negotiations, it is ready to negotiate other contract terms (e.g., financial provisions) with each of the remaining companies. The team should take extra care to ensure that negotiations do not give a competitive advantage to one respondent over another. Also, there should be some objective standards for balancing costs and the importance of contract terms.

**Note:** Throughout the negotiation process, it would not be appropriate to discuss Company A's pricing while negotiating with Company B (for example, telling Company A that Company B is charging less). The resulting contract should contain fair and equitable pricing for the goods or services being requested.

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### Awarding the Contract

After all negotiations and modifications have been completed, each remaining company will submit a best and final offer. The SFA staff needs to review the technical proposals within each best and final offer first to ensure that each of them still fully meets the SFA's needs. Remember that is why it is critical that the specifications and criteria contained in the RFP are thorough and well written. Once the team has determined that each of the remaining technical proposals would fully meet its needs, the team's decision regarding the contract award should be fairly straightforward. The SFA staff should seek to award contracts on the basis of the best overall value.



## USDA Foods

**U**SDA allows State Distributing Agencies and school districts to contract with commercial food processors to convert raw and/or bulk USDA Foods into a variety of convenient, ready-to-use end products. Foods processed this way go to schools participating in the National School Lunch and other Child Nutrition Programs. State Distributing and Recipient Agencies, such as school districts, are eligible to participate in further processing of USDA Foods.

USDA offers states an estimate of the dollars planned to support a particular USDA Food. Multiple forms of a USDA Food are available as ordering options, one of which is bulk for reprocessing.

Processing of USDA Foods can occur at the state or district level. If processing USDA Foods occurs at the state level, the state determines the end product. The district then has the option of placing an order from the state for the end product. States generally provide a survey of available products to be completed by the district. Districts have the responsibility to submit information by the required deadlines.

### Processing

- Benefits of Processing
- Processing Functions
- Direct Diversion via the Processor Selection System
- The Value of Processing

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### Benefits of Processing

State Distributing Agencies, districts and food processing companies have learned that working together is mutually beneficial to the food industry and program participants and ensures that processed products complement commercial purchases. The processing of USDA Foods provides the industry the opportunity to market its finished products while Recipient Agencies have the opportunity to receive a wider variety of end products that meet individual district needs and local flavor profiles.

Processing can:

- stretch USDA Foods dollars by ordering lower cost bulk products;
- increase food safety by eliminating handling of raw product in operations;
- reduce cash outlays for food preparation, reduce labor, storage and delivery costs; and
- have bulk USDA Foods delivered directly from USDA vendors to the further processors of their choice.

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### **Processing Functions**

Multiple forms of USDA Foods are available as ordering options, one of which is bulk for processing. For example, funds to support the turkey market may be spent on direct-ship, value-added turkey roasts, turkey ham, deli breasts or bulk pack turkeys. The bulk pack is often available at a lower cost per pound and is specifically designed for efficient processing into end products such as sliced deli meat or cooked crumbles. The state coordinates with school districts and determines the best forms in which to order USDA Foods to meet schools' needs. For raw bulk USDA Foods to be further processed into selected end products, the State Distributing Agency or school district contracts with commercial food processors to have the USDA Foods converted to more ready-to-use products.

This legally binding agreement (or processing agreement) allows the processor to receive USDA Foods such as bulk chicken as an ingredient in the production of a finished end product like grilled chicken breast and fajita strips. In turn, the value of the USDA Foods is passed through to the RA in the form of a lower cost for the finished product. USDA purchases and delivers bulk USDA Foods to the designated processing location as ordered by the state. Some state agencies delegate certain processing functions, such as ordering, bidding, and monitoring, to school districts. Others manage these functions themselves.

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### **Direct Diversion via the Processor Selection System**

Contracted processors solicit participating RAs' directly during a specific time frame, known as the selection period. Recipient Agencies may assign any amount of their fair-share of any available USDA Foods to the processors of their choosing. At the close of the selection period, the state agency tallies the results and arranges with the USDA to ship the appropriate amounts to the processors. Sales of finished products occur throughout the school year with specific arrangements made between the RA, the processor, and the distributor. Processors entering into these types of agreements must ensure the full value of the USDA Foods is provided to the Recipient Agency.

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### **The Value of Processing**

Food contained in the finished products is returned to the Recipient Agency. This value can be returned to the RA by:

- discounting the normal commercial price of a product,
- paying a refund to the school, or
- charging a fee for service for converting the USDA Foods.

When calculating the costs of food used, the value of USDA Foods must be considered. USDA has recently taken steps to more fully integrate USDA Foods with other commercial foods utilized by school nutrition programs. This has resulted in purchased items and USDA Foods being accounted for in single inventory. The intent is to reduce cost and provide more timely deliveries. Under the single inventory concept, cost of food used may include the value of USDA Foods.

It is important for the district to determine in advanced if it plans to process USDA Foods independently or if the district will participate in the state processing program. Basic types of processing agreements are discussed in the section entitled, Processing Agreements.



## Processing Agreements

States may require the district's commitment to participate in the state processing program. Districts need to provide the state agency with projections of their USDA Foods plan between January and February. Basic types of processing agreements are identified below.

### Basic Types of Processing Agreements

- National Processing Agreement
- State Agreement
- Recipient Agency
- State Master Agreement
- Regulations
- State Agency Contacts

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#### National Processing Agreement

In an effort to reduce costs and paperwork, USDA FNS has taken on the role of holding the agreement with the processor and approving all of the end products that will be manufactured under the agreement. All multi-state processors must have a national processing agreement in place.

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#### State Agreement

Under a state agreement, the distributing agency negotiates solicitations and/or prices, selects the processor and the end products which will be produced, and enters into an agreement with the processor.

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#### Recipient Agency Agreement

Under a Recipient Agency agreement (RA), the RA, school, or other eligible agency enters into an agreement with the processor. This kind of arrangement requires the approval of the distributing agency. Once approved, the RA may purchase end products from that processor. An RA agreement should be used after the agency has completed its procurement process.

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### State Master Agreement

Under a state master agreement, the distributing agency enters into an agreement with the processor, and only designated eligible RAs may purchase end products from the processor.

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### Regulations

USDA Foods processing is governed by regulations contained in the Code of Federal Regulations at 7 CFR Part 250.30. A complete copy of the 7 CFR 250 regulations may be found on the Food Distribution website at: [www.fns.usda.gov/fdd/regs/fd\\_regulation.htm](http://www.fns.usda.gov/fdd/regs/fd_regulation.htm).

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### State Agency Contacts

For more information about the USDA Foods Processing, we suggest that you contact your State Distributing Agency. A list of these state contacts may be found on the Food Distribution website at: [www.fns.usda.gov/fdd/contacts/sdacontacts.htm](http://www.fns.usda.gov/fdd/contacts/sdacontacts.htm).

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### Processed USDA Foods—Decision Making Process

Some state and local school districts select table-ready processed USDA Foods. In making the decision if USDA Foods processing will be beneficial to your school nutrition operation, consider your situation and logistics.

- What kind of storage is available in your district?
- How many deliveries per week do you require?
- How many locations require delivery?
- How often will the item be menued?
- Does the state agency offer USDA Foods processing?
- When do you need to place your order for USDA Foods processing?
- How will the food safety measures of USDA Foods processing be identified in your HACCP plan?
- Who will develop the product specifications for the USDA Foods processing items?
- How will the USDA Foods processing items be tested for acceptability?
- What are the food cost benefits of utilizing USDA Foods processing items?
- What are the labor cost benefits of utilizing USDA Foods processing items?
- Will you be able to secure the USDA Foods processing product in the quantity to meet the needs of your menus?
- Will you need to procure a similar product on your solicitation specification?

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## Rebates

Using rebates as the value pass-through can make your procurement method simpler, but you must do the capital layout for the USDA Foods value up front and wait to get your refund from each processor after the fact.

There are several methods to consider when obtaining the value of USDA Foods in processed foods. The practices are fee-for-service (FFS), modified FFS, and indirect discount, commonly referred to as Net-Off-Invoice (NOI). What is permissible in the state? What method is best for the district? Does the supplier work in more than one method? Is the supplier approved for more than one method? A detailed understanding and analysis must be completed when assessing the benefits of each method.

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## Fee-For-Service (FFS)

Under FFS, based on the size of the district's order, processors may be limited in the number of deliveries they can make throughout the school year. The timing of these deliveries has many factors. The net result is that once delivered to the distributing agent, the invoice is payable to the processor. If the RA is unable to accept some or all of the product from the distributor for whatever reason, the RA ends up paying for product that they cannot access for some time. This may or may not fit into the cash management goals of the district.

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## Modified Fee- For-Service

The distributor acts as the processor's billing agent and invoices the RA a per pound/case price *excluding* the value of the USDA Foods plus distribution fees. The distributor holds title to the USDA Food after receipt from the processor until the RA receives it under single state processing agreements. USDA holds the title for nationally approved processing agreements. It is strongly recommended that the RA request that the distributor have an endorsement on the distributor's property insurance to cover product in their care and control.

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## Net-Off-Invoice (NOI)

The processor sells finished product containing USDA Foods to a distributor at a gross price. The distributor sells that product to an eligible RA at the commercial price minus the value assigned to the commodities contained in the case as a net price. Under this system, the distributor must then apply for the refund from the processor for the value of the donated food.

**Example:** You can receive your hamburger patties from your current commercial distributor at a discount. The work behind the scenes is what makes this a viable option; the distributor must create a SKU for the hamburger patties and allow sale to qualifying RA; the manufacturer and distributor work together to maintain this information.

For additional information see on USDA Foods processing see USDA Food Distribution. (February 17, 2012) Commodity Processing: About Commodity Processing which can be accessed at: [http://www.fns.usda.gov/fdd/processing/about\\_processing.htm](http://www.fns.usda.gov/fdd/processing/about_processing.htm).

Some school districts may decide to participate in cooperative purchasing groups. This type of purchasing process is discussed in the section entitled, Cooperative Purchasing Groups.



## Cooperative Purchasing Groups

**C**ooperative purchasing occurs when a group of people or entities join together to accomplish all or part of the steps in the purchasing process. Cooperative purchasing is a system aimed at using group purchasing in an effort to increase buying power, reduce costs, and improve the quality of products and services available to members. In this reference a purchasing cooperative consists of a group of school districts. The purpose of a cooperative purchasing group is to use the collective buying power and expertise of the group to obtain the highest quality products at the best price.

Cooperative purchasing groups are recognized entities and member-based businesses. Cooperatives consisting of groups with public status do not need to procure one another's services as they are all public in nature, but if a group of entities with public status (i.e., school food authorities) use the services of a private or profit making third party entity to procure on their behalf the cooperative must procure the services of the private or third party entity. . Verify that the cooperative purchasing group follows Federal, state, and local rules, regulations, and policies governing procurement in your area.

Developing a process that blends the needs of individual school districts into a single cooperative purchasing group requires a methodical approach. This includes: planning, analyzing, implementing, and monitoring all aspects of the school nutrition operation.

The success of a cooperative purchasing group is based upon members' participation in product selection and the use of compromise to reach consensus. Effectiveness of the cooperative purchasing group depends upon members' agreement on quality, quantity, and descriptions of the products, as well as terms and conditions of the solicitation document. The members' collective knowledge creates a synergy that generates new product concepts and encourages networking and sharing of resources, benefiting the entire group.

Sustainability is based on the members' contributions. Some cooperative purchasing groups charge an annual membership fee. Membership fees may be obtained by an agreement to withhold a portion of net profit, by assessments based on units of product purchased, or by a direct membership fee. To ensure continuity, cooperative purchasing groups operate using some universal practices.

The establishment of member-developed bylaws and standard operating procedures comprise just a few of these practices. Generally, the group will identify a spokesperson or elect officers to serve as the contact for distributors, media, and membership inquiries. The members need to develop strong working relationships with each other and speak in one voice, preferably through the spokesperson or officer.

Districts belonging to a cooperative purchasing group generally realize:

- a reduction in district's administration time in procuring products ,
- higher quality of products, and
- the opportunity for a wider range of products.

The decision to participate in a cooperative purchasing group requires accurate data collection and input from key district personnel. The discussion should include the district's administrator in examining the time, commitment, and legal responsibilities associated with membership in a cooperative purchasing group. Often districts are already experienced in cooperative purchasing for items such as books, paper, and equipment. The decision to join should only be made after determining membership to be the best option to achieve the overall mission of providing healthful, cost-effective meals to district customers.

Many cooperative purchasing groups are formed to increase the members' ability to purchase ready-to-use end products made from USDA Foods. Ready-to-use end products allow for the use of USDA Foods in the final production of many mainstay menu items. By utilizing the USDA Foods in the final product, there can be a cost savings to the district. Generally, USDA Foods must be sent to manufacturers in predetermined quantities, which can be very large. Check with your state agency to determine what is applicable in your state.

If the cooperative purchasing group will be including ready-to-use end products made from USDA Foods on their solicitation documents, check with your State Distribution Agency to determine their requirements for these contracts. Be sure the cooperative understands any state limitations on pricing structures and method of distribution of these items. Your State Distribution Agency can provide further assistance.

Determine any constraints that apply in the district and be sure the requirements of the cooperative purchasing group do not conflict in any way that would prevent the district from entering a binding agreement. Considerations include: budget, storage capacity, capability for central warehouse distribution, knowledge, and skill of available labor force, and the district's student Average Daily Participation in the school meals program.

Prior to joining a cooperative purchasing group, it is important for a district to assess the advantages and disadvantages of membership. Details can be found in the section entitled, Advantages and Disadvantages of Cooperative Purchasing Groups.

## Advantages and Disadvantages of Cooperative Purchasing Groups

Cooperative purchasing groups may or may not be beneficial to your district. The benefits may produce considerable savings and improve the quality of products purchased. On the other hand, the possibility of fewer deliveries or elimination of some specific products may not be beneficial and may actually cause hardship to a district. Some advantages of a cooperative purchasing group are discussed below.

### Advantages of a Cooperative Purchasing Group

- Increased Purchasing Power
- New Menu Items
- Labor Reduction
- Direct to Manufacturer Purchasing
- Increased Volume and Volume Discounts
- Networking Opportunities
- Procurement Decisions by Governing Board and Advisory Group
- Other Benefits

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#### Increased Purchasing Power

Cooperative purchasing groups negotiate purchasing contracts with distributors as one large entity. The larger volume enables school districts to leverage their collective purchasing power and potentially receive lower prices. For example, if eight school districts purchase frozen broccoli spears individually, the distributor may not consider the broccoli a high volume item and the price may be higher for each of the eight individual districts. The individual districts also may select different distributors to purchase the broccoli. If these same eight districts join the cooperative purchasing group, their combined total number of cases of broccoli to be purchased and standardized specifications will be negotiated with the distributor. Buying broccoli as a collaborative group can help to increase buying power. The distributor will see an increase in the sale of broccoli, and the districts will see the cost savings due to the combined higher volume purchased. In addition, it is less labor intensive for the vendor to compile one bid package for the group rather than eight individual bid packages.

It is important to provide the distributor with a realistic projection of the actual quantities to be purchased. Overestimating quantities is not beneficial to the cooperative purchasing group because it commits them to purchasing a specific quantity of product that could be grounds for a bid protest. It is also not beneficial to the distributor as this will increase their cost and inventory of the product.

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### **New Menu Items**

A cooperative purchasing group offers a combined and enhanced product knowledge base. To meet the needs and tastes of school nutrition customers, food processors develop a wide variety of products. The typical school nutrition operation purchases more than 500 different items. With their many responsibilities, directors are challenged to stay abreast of all new school products. The combined buying power may influence the quality and improve the availability of unique menu items. Successful menus are often shared among members. Providing higher quality meals and offering new and different menu items can contribute to customer satisfaction and increased participation.

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### **Labor Reduction**

School nutrition departments can purchase from a variety of distributors. Cooperative purchasing groups often have a prime distributor which results in fewer deliveries, fewer invoices, less paperwork, fewer checks written, and less labor costs. Multiple deliveries from multiple distributors interrupt the work day at each site and proper receiving is labor intensive and thus expensive to the district. Although it is a cost-effective advantage to reduce deliveries, it is imperative to determine if your district has adequate storage space to accommodate the large delivery volume. Additionally, districts can share the work involved in conducting procurements and managing contracts.

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### **Direct to Manufacturer Purchasing**

Cooperative purchasing groups provide the opportunity to purchase large volume items directly from the manufacturer. It is advantageous and cost-effective to purchase directly from the manufacturer because it can eliminate the incentives and cash awards the manufacturer provides to the distributor. For example, cooperative purchasing groups containing a combined enrollment of 100,000 students or more may provide the necessary volume and serve as an attractive option for some food manufacturers. When the enrollment threshold is reached, the governing body of the cooperative purchasing group may consider this option for high volume items to realize even greater savings.

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### **Increased Volume for School Districts**

A cooperative purchasing group may be advantageous for small to medium school districts or a district located in a rural location. Larger districts usually have a staff dedicated to overseeing the procurement functions. In small to medium-sized districts, a director may serve as the supervisor, nutritionist, accountant, personnel manager, and food purchaser; by engaging in a cooperative purchasing group districts can share procurement expertise and achieve lower prices and higher quality due to larger volume group purchases.

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### **Networking Opportunities**

Belonging to a cooperative purchasing group is an excellent opportunity to share new ideas and network with other district directors, allowing newer group members to benefit from the knowledge of more experienced district directors. Each member of the group brings different information about products and distributors which allows members to share and learn from each other. Relating knowledge, learning experiences, and hardships can provide insight to help eliminate or reduce potential problems.

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### **Procurement Decisions by Governing Board and Advisory Group**

One of the most recognizable benefits of belonging to a cooperative purchasing group is the decision making of the group's governing board. As a member of the group, a director has access to support from a skilled leadership team and governing board to help find solutions to procurement problems.

A designated individual from the cooperative purchasing group has direct contact with the distributor awarded the contract. For example, if a distributor fails to comply with the contract terms, the problem is addressed by a designated representative of the cooperative purchasing group with consent of the governing body. That individual will discuss product specifications and potential new products. The district director has very little contact with the distributor and can focus attention and time on other responsibilities. The director and district avoid the time consuming task of preparing a solicitation document and managing the contract on a daily basis.

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### **Other Benefits**

Other potential benefits of joining a cooperative purchasing group include an increase in expertise and resources. The sharing of best practices among member districts can lead to labor savings for individual directors. Over time, the group matures and gains trust in each other and this can lead to many other areas of cooperation. Some additional resources that may be developed are: group marketing plan and annual promotion calendar; group cycle menus and production records for the various age groups; staff training and continuing education programs; branding, including labels and paper goods; and specialty solicitations such as milk solicitations, bread solicitations, and solicitations for processing of USDA Foods. Some disadvantages of a cooperative purchasing group are discussed below.

## Disadvantages of a Cooperative Purchasing Group

- Consensus Among Members
- Deliveries
- Minimum Cases
- Elimination of Distributors
- Increased Food Cost
- Storage
- Administrative Costs

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### Consensus Among Members

It is critical for members to come to a consensus on products. Some cooperative purchasing groups allow members to place similar products on the solicitation when members cannot agree on a particular item. This can be problematic and less attractive to the vendor. Members generally receive better prices by purchasing higher volume and less variety of products. To receive the best possible price, the best practice is for members to agree on similar products.

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### Deliveries

There is the possibility of larger and less frequent deliveries. The number of deliveries and different location drops are major negotiating factors between the cooperative purchasing group and the distributor. In order to economize, some cooperative purchasing groups decide to have larger quantities of food delivered and have them delivered less frequently. The fewer the deliveries, the more cost-effective this will be for the distributor. Accommodations outside the agreed upon delivery schedule may impose penalties on a district.

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### Minimum Cases

In some cases the cooperative purchasing group establishes a minimum number of cases for a product to be included in the solicitation. Often a district will exclude lower volume or seasonal items in the solicitation projections and the cooperative will guarantee a specific percentage of food expenditures the members will purchase from the prime distributor.

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### **Elimination of Distributors**

Another disadvantage of a cooperative purchasing group may be the elimination of the smaller and more familiar distributors. The smaller distributors may not have the ability to provide large product volume, handle a greater distribution area, or abide by all the contract terms. Some relationships with small distributors may be lost when a district joins a cooperative purchasing group.

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### **Increased Food Cost**

Members of cooperative purchasing groups may experience an increase in food costs due to the higher quality of products purchased compared to the products they purchased prior to becoming a member. Agreeing on product specifications is one of the biggest challenges. In this case, the solution is either to compromise with a suitable substitute, eliminate the product from the menu, or purchase the item independently. Bringing in small districts could cause costs to increase for larger districts if there is not some provision for them to receive credit due to their volume.

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### **Storage**

In some cases a district's dry and cold storage space is unable to accommodate an increase in delivery volume due to less frequent deliveries, forcing them to purchase additional storage equipment or rent additional storage space. The cooperative purchasing group establishes the minimum quantity of products for each delivery so each district should compare the savings gained from participating in the group to the cost of purchasing the new equipment or paying rental fees.

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### **Administrative Costs**

Finally, there may be administrative costs in operating and belonging to a cooperative purchasing group. Usually membership fees are required for the sustainability of the group. These fees can range from a flat fee based on district enrollment, to a per student fee, to a fee per case of the product. Fees, offset by the potential savings of increased purchasing power, should be calculated and compared to the cost incurred by the district to conduct procurements on their own. Once the advantages and disadvantages of cooperative purchasing have been recognized by SFAs, an informed decision can be made on whether joining would be beneficial to the district. Details can be found in the section entitled, *Joining a Cooperative Purchasing Group*.





## Joining a Cooperative Purchasing Group

**D**ifferent school districts have different needs, so it is important to find a cooperative purchasing group that can satisfy the unique needs of the district. Delivery schedules, product offerings, and local regulations may influence the decision. Consider the following information before joining a cooperative purchasing group.

### Joining a Cooperative Purchasing Group

- Exploring Existing Cooperative Purchasing Groups in Your Area
- Determining Your District's Needs
- Evaluating if the Cooperative Buying Group Can Meet Your Needs
- Discussion with Administrators
- Obtaining Approval from Authorities to Participate

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### Exploring Existing Cooperative Purchasing Groups in Your Area

Determine if there are existing cooperative purchasing groups in your area. Collect some basic information about these cooperatives, such as how they operate, the types of products they offer, and their reputation.

Some of the most helpful resources for gathering this information are your state agency, your local SNA chapter, neighboring school districts, and/or other professional organizations. Contact the cooperatives directly to get further details about the length of time that the cooperative has been in existence and the markets in which it operates. Also, identify individuals who are currently participating in the cooperative purchasing group to determine if your needs are compatible

Clarify the type of pricing structure used in the cooperative purchasing group. Fixed pricing and cost reimbursable are the two types of pricing distributors use when quoting prices. The pricing system the cooperative chooses establishes the degree of risk distributors must take when quoting prices.

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### Determining Your District's Needs

There are several considerations when determining the needs of your district. For example, your district might need special products that are not currently available through the cooperative. Or you might not have the storage capacity to accommodate larger, less frequent deliveries. Your district may need to purchase additional equipment such as a cooler or additional storage or find space to rent. Conduct a **feasibility and cost-benefit analysis** to weigh the pros and cons of these options.

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### Evaluating if the Cooperative Can Meet Your Needs

Once existing cooperative purchasing groups are identified in the area and the district's needs have been determined, the evaluation process will determine if there is a cooperative that meets the needs of the district. Evaluate and compare the features of the available cooperatives by asking the following questions.

- What are the membership policies and requirements for fees, minimum purchase requirements, and contract terms of each cooperative under consideration?
- Who manages the cooperative? What is the organizational structure?
- Which other districts participate in this cooperative? Are they similar? What do they see as benefits of membership? Are they satisfied with the cooperative?
- How closely do the product offerings of this cooperative meet the needs of your school district? Can items the district uses be added to the contract?
- Is the delivery schedule suitable for your district? If not, would changing receiving and storage procedures in order to participate in the cooperative be an improvement or an obstacle?
- Are there penalties for mistakes and oversights? Is there a penalty if an item was omitted from the district's order or if an item was ordered but omitted from the delivery?
- In an emergency, is it possible to obtain items outside the scheduled delivery?
- Can small, familiar distributors provide services through this cooperative?
- Is the contract a fixed or cost reimbursable pricing contract?
- Is the cooperative administered in an ethical manner? Does the cooperative meet the legal and programmatic requirements of the district? Does the cooperative adhere to all Federal, State, and local regulations?

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### Discussion with Administrators

What benefits will result from taking this action? Improved meal quality, energy savings, and overall cost savings are examples of benefits. What are the hidden costs? What are the disadvantages of taking this action, and are there compensating advantages?

If you decide to join a cooperative purchasing group, you will need to explain the benefits of membership to your administrators. Explain the improvements that will result from taking this action, including better meal quality, energy savings, reduction in administrative and staff time, and overall cost savings. Also identify any hidden costs that might arise.

If there are disadvantages to joining a cooperative purchasing group, communicate the compensating advantages. For example, food costs might be more because the quality of items purchased are of higher quality. The improved product quality should increase ADP, resulting in overall savings; the cooperative might deliver in quantities that would require the purchase of an additional freezer or other storage equipment or the need to rent additional storage. Initially, the cost might be higher, but lower food costs may be diminished, resulting in a projected long-term savings.

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### **Obtaining Approval from Authorities to Participate**

Identify any legal and programmatic assistance available in your district and consult with those individuals. This could include officials at the state agency and the school district's lawyers, and/or school administrators. Then obtain a resolution from the appropriate authority within your district, such as the school board and legal authorities, to participate in the cooperative purchasing group.

The following templates are located at the end of this section and may be useful when considering joining a cooperative purchasing group

- *Exploring Local Cooperative Purchasing Groups Worksheet: Questions to Ask State Agencies and Professional Organizations*
- *Exploring Local Cooperative Purchasing Groups Worksheet: Questions to Ask Representative from Other School Districts Who Are Cooperative Members*
- *Exploring Local Cooperative Purchasing Groups Worksheet: Questions to Ask the Cooperative's Officers or Designated Representative*

### Exploring Local Cooperative Purchasing Groups: Questions to Ask State Agencies and Professional Organizations Template

**Directions:** Use this form as a guide when contacting state agencies or professional organizations for information on existing cooperative purchasing groups in your area. Circle Yes or No as they answer each question, and use the space allowed to document their answers. These questions can be asked over the phone or sent in an e-mail.

Name, title, and contact information of the person you are interviewing:

Do you know of any cooperative purchasing groups in the area? (YES or NO) If yes, list names and contact information below:

Do the cooperative purchasing groups in the area hold public status or are they private/third parties whose services must be procured?

Do other districts in the area participate in cooperative purchasing groups? (YES or NO) If yes, list names and contact information:

Do you know of any districts that were members of a cooperative purchasing group and are no longer members of the group? (YES or NO) If yes, list names and contact information:

What is the reputation of these cooperative purchasing groups among their members and local distributors?

How would you rank the cooperative purchasing groups in terms of their product quality and service?

Have any of these cooperative purchasing groups been involved in legal disputes involving regulatory violations or a breach of contract with distributors or members? (YES or NO) If yes, explain the circumstances.

**Exploring Local Cooperative Purchasing Groups:  
Questions to Ask Representatives from Other School Districts  
Who Are Cooperative Members Template**

**Directions:** Use this guide when contacting a representative from another school district who is currently a member of a cooperative purchasing group. Circle YES or NO as they answer each question, and use the space allowed to document their answers. These questions can be asked over the phone or sent in an e-mail.

Name, title, and contact information of the person you are interviewing:

Is the cooperative purchasing group able to provide all the products you need? (YES or NO) If not, explain the circumstances. How has this problem been resolved?

Are you satisfied with the quality of the products provided? (YES or NO) If not, why not? What specifically has been unsatisfactory?

Are your administrators satisfied with the cooperative purchasing group? (YES or NO) If not, why not? What specifically has been unsatisfactory?

Do deliveries usually arrive on time? (YES or NO) If not, how late were the deliveries? How often have they been late? Were there penalties; if so what were they?

Are product shortages or substitutions a concern? (YES or NO) If not, explain the circumstances.

Are there other membership benefits that you have discovered? Are you satisfied with your membership in the group overall? (YES or NO) If not, what specifically has been unsatisfactory?

What were some of the challenges you encountered in your transition and how did you resolve them?

### Exploring Local Cooperative Purchasing Groups: Questions to Ask the Cooperative's Officers or Designated Representative Template

**Directions:** Use this form as a guide when gathering information directly from a representative of a cooperative purchasing group. These questions can be asked over the phone or sent in an e-mail.

Name of the cooperative purchasing group:

Name, title, and contact information of the person you are interviewing:

What are membership advantages?

Are there membership fees or other requirements for joining the cooperative? (YES or NO) If yes, what are the fees and the requirements?

How is transparency maintained?

What mechanism exists for the return of rebates, discounts, credits, and surplus funding from membership fees and how often is reconciliation performed?

What products does your cooperative group offer? (Request a written list of high volume products.)

How are products chosen for the solicitation?

If I need products not currently offered, can they be added to the offerings without creating a material change? (YES or NO)

What is the delivery schedule? What is the minimum/maximum quantity required for each delivery?

Is it possible to obtain items outside of the regular delivery schedule? (YES or NO)

Are there penalties for mistakes or oversights on orders? (YES or NO) If yes, what are the penalties?

What documentation do you require (e.g., HACCP plan, disbarment forms).

### Determining Your District's Needs Template

**Directions:** Ask yourself the following questions about your current procurement procedures, and write your answers in the spaces provided. As you examine your current system, think about how changing your delivery methods would affect your school nutrition operations.

What is your current delivery schedule? Write down which items (such as produce, dairy, paper goods, etc.) you receive on which days of the week and from which distributors.

Monday:

Tuesday:

Wednesday:

Thursday:

Friday:

How would more or less frequent deliveries affect your daily operations?

Do you need items delivered to multiple sites within your district? (YES or NO)

Does your district have any specific time constraints or limitations for deliveries?

If you could only have products delivered to a central location, would you be able to distribute them effectively? How would you accomplish this?

What is the current storage capacity of your facilities relative to the size of the deliveries you are currently receiving? Could you accommodate larger deliveries? If so, how much larger volume can you accommodate?

Would additional shelving, freezers, etc., need to be purchased to accommodate larger deliveries? (YES or NO) If so, how much additional equipment would you need, and what would be the cost?

**Evaluating Cooperative Purchasing Groups: Will They Meet Your Needs? Template**

**Directions:** Use the chart below to help determine whether cooperative purchasing groups in your area will be able to meet your school district's needs. Rank each factor as Excellent, Good, Satisfactory, Poor, or Unacceptable. Add the scores. The scores will range from 0 to 28 points, with 28 being the highest. This measure can help determine whether a cooperative is a good match for your district and help to compare cooperatives if there are multiple groups in your area.

Name of Cooperative \_\_\_\_\_ Date \_\_\_\_\_

<b>Evaluating Cooperative Purchasing Groups</b>					
<b>Criteria</b>	<b>Excellent 4 points</b>	<b>Good 3 points</b>	<b>Satisfactory 2 points</b>	<b>Poor 1 point</b>	<b>Unacceptable 0 points</b>
The cooperative offers the products we need.					
The products are equal or better than current quality.					
The pricing is equal or better than current pricing.					
The cooperative has a delivery schedule that will work for us.					
The cooperative will deliver in quantities we can accommodate.					
The cooperative has a good reputation among current members.					
The cooperative is in compliance with district regulations and policies.					
<b>Total Points</b>					



## **Presenting to District Administrators: Why Should We Join a Cooperative? Template**

**Directions:** Once you have gathered the necessary information regarding the cooperative purchasing group, it is important to communicate your findings and obtain approval from the district administrators. To do this, you may have to attend an informal meeting or provide a presentation at a school board meeting. Keep in mind that the next available meeting might be several weeks away, so plan ahead to get on the agenda early. The outline and mock script below can serve as a template as you compile and organize a 10 minute presentation. Keep the presentation short and simple.

### **Introduction (2-3 minutes)**

Give a brief description of what a cooperative purchasing group is and what it does for its members. Describe the cooperative purchasing group you would like to join; including how long it has been operating, how many members it has, who those members are, and its reputation. If you spoke with participating members who are satisfied with the cooperative, describe their feedback regarding the products, service, and cost savings provided by the cooperative.

### **Advantages of Participation (2-3 minutes)**

The main benefits of joining a cooperative purchasing group are time savings, networking, and cost savings. Give examples of some of the ways it will save time. Be prepared to provide numbers when discussing cost savings. Give an estimation of the dollar amounts or percentage that will be saved on each order or on an annual basis.

### **Possible Disadvantages (2-3 minutes)**

If there are disadvantages (e.g., immediate, short-term expenses) involved in joining the cooperative purchasing group, explain that there are compensating advantages (e.g., long-term savings). If the cooperative charges membership fees or delivers in large quantities that will require the purchase of additional storage equipment or renting storage, give an estimate of these costs and justify the investment.

### **Conclusion (1-2 minutes)**

The administrators are interested in the bottom line. Review the cost saving potential of joining the cooperative purchasing group. Be sure to leave some time for questions or comments at the end of your presentation. When you have finished, find out what will be the next step in the approval process for joining the cooperative.

In the event several districts are considering forming a brand new cooperative group, details can be found in the section entitled, Forming a Cooperative Purchasing Group.



## Forming a Cooperative Purchasing Group

A school district has the authority to establish its own system to procure goods and services as long as it follows the federal government's firm procurement guidelines. All procurement transactions must be conducted in a manner that provides free and open competition consistent with the Federal standards found in 7 CFR 3016.36. The guidelines exist to ensure that taxpayer dollars are used prudently and judiciously and that there is fair competition among distributors for federal dollars.

Other general federal guidelines that must be followed are:

- there must be written specifications for all products purchased,
- identical instructions must be provided to all potential bidders,
- contracts with a projected value above \$150,000 overall must be procured using a formal procurement process, and
- contracts with a projected value below \$150,000 may go through an informal procurement process (states may have lower thresholds).

Consider the following before forming a cooperative purchasing group.

### Forming a Cooperative Purchasing Group

- Conduct Initial Research
- Conduct a Member-User Survey
- Analyze the Financial Needs of the Cooperative Purchasing Group
- Conduct a Meeting with Potential Members
- Conduct a Successful Meeting
- Develop a Business Plan
- Develop Acceptable Contractual Agreements
- Prepare the Solicitation

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### Conduct Initial Research

Determine the level of interest in starting and supporting a cooperative purchasing group by forming a leadership group of interested directors. Contact local directors first by phone and briefly discuss the possibility of developing a cooperative purchasing group. Invite potential members and outside advisers to a general meeting. Ask the directors if they will be willing to complete a survey to see if their interests validate proceeding to the next step.

Network with local districts and identify members to serve on a steering committee. A steering committee is responsible for planning the products and brands to pursue in developing purchase agreements with suppliers. The committee members are key stakeholders who will provide guidance in the development of the strategic plan and support the vision and mission of the cooperative purchasing group. Remember to delegate the responsibilities equally among the members, provide timelines to report progress on activities, and plan for regular communication meetings.

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### Conduct a Member-User Survey

Conduct a member-user survey to determine if there will be sufficient members to support the functionality of a cooperative purchasing group. The feedback from the survey serves as a guide for the steering committee in determining their next plan of action.

A formal survey is best for estimating potential group membership. Survey questions should gather information to ascertain the level of support in terms of products desired, possible business volume, and if the financial commitment is sufficient enough to organize and successfully operate the cooperative. The steering committee should develop a list of potential members.

Potential members may be concerned about providing confidential information. Establish a rapport and trust with members by discussing the survey in a phone conversation, at local SNA chapter meetings, or at a neutral location. For an example of a survey, see the *Cooperative Purchasing Group Interest Survey* at the end of this section.

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### Analyze the Financial Needs of the Cooperative Purchasing Group

As with any new venture, carefully analyzing the strengths and weaknesses of the endeavor contributes to an objective and rational approach in the decision-making process.

Understanding, in advance, the costs to form and maintain a cooperative purchasing group will allow for effective communication of the economic value throughout its lifecycle.

To determine if forming a cooperative will be sustainable, conduct a **feasibility analysis**. Feasibility analysis helps to identify and evaluate potential barriers or adverse conditions that may preclude a beneficial outcome.

During the review process, identify suitable markets, sources of supply, potential distributors, and their requirements. An important part of the analysis is to identify the volatility of business fluctuations in volume or operating costs. Examples of volatility include adverse weather affecting product sales, wage rates, operating efficiencies, and interest rates.

**Capitalization** is the amount and source of money needed to start and operate a business such as a cooperative purchasing group. Calculate costs, such as start-up fees, member investment fees, attorney fees, expert advisor fees, printing and mailing costs, and administration costs.

Capitalization is vital to ensure that the legal and financial aspects of the cooperative purchasing group are well founded however, it should be noted that the services of any outside (i.e. third party or for profit) entities must be competitively procured and third party procurement agents cannot be used unless every participating district properly procures them.

Some cooperative purchasing groups select to seek expertise from outside advisors. An outside advisor may be a representative from your state agency, manufacturer's solicitation department representatives, officers from cooperatives in other states, and/or potential members' legal or purchasing departments. Before inviting any of the advisors who would travel to speak to your general meeting, ascertain if they will charge a fee for their time or require reimbursement for travel expenses.

Frequently the administrative district will absorb some of the start-up costs or bill the cooperative for the administrative costs after the cooperative has collected membership fees. Identify any legal and programmatic assistance available in your district and consult with those individuals. This could include officials at the state agency that administers the SNPs, the school district's lawyers and procurement officer, and/or school administrators. Then obtain a resolution from the appropriate authority within your district, such as the school board, to start the cooperative purchasing group. If you are considering your district as the administrative district, discuss with your school authorities the district's obligations.

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### **Conduct a Meeting with Potential Members**

The steering committee should hold a meeting with the final action being a vote to determine whether or not to continue with the establishment of a cooperative purchasing group. The leadership group should select a presiding officer who can conduct a business meeting. Sometimes an advisor can act as chair or help answer questions.

Allow adequate time to review terminology, discuss the results of the member-user survey, and communicate the operations, advantages, disadvantages, possible risks, and limitations of developing a cooperative purchasing group. Encourage members to express procurement needs.

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### **Conduct a Successful Meeting**

The following are steps in conducting a successful meeting.

- Send out meeting notices, logistical information, and reminders in a timely manner.
- Prepare an agenda, sign-in sheet, and written handouts.
- Be as prepared as possible by understanding all the issues to be discussed and the interests of each party.

- Assign an individual to lead the meeting to ensure minimal agenda deviation. Begin and end the meeting on time.
- Ask someone to take copious notes.
- Introduce all parties in the room.
- Provide sample resources.
- Encourage prospective members to ask questions and allow plenty of time for discussion.
- Provide follow-up to outstanding issues in a timely manner.
- Establish day, time, and location for next meeting.

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### **Develop a Business Plan**

Economic need is fundamental to the formation and operation of any cooperative purchasing group. In preparation of the detailed business plan, the steering committee should seek assistance from specialists in the legal, accounting, financial, and cooperative business operations. Their help and assistance is crucial during the business plan analysis and development.

Among sources to check are the state extension specialists working with cooperatives, the state's cooperative council, the National Society for Cooperative Accountants, USDA's Cooperative Services, and/or an established cooperative in the area. After determining if the projected initial investment is within the financial capabilities of its members, the new cooperative group should initially limit services to avoid unnecessary costs. Once up and running successfully, the additional services may be added. Identify and take full advantage of available resources.

### **Develop Acceptable Contractual Agreements**

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#### **Agreements for Cooperative Membership and Participation**

Member districts may choose to use a third party to administer the cooperative. If the third party is not a governmental agency or another school district, competitive procurement of this service must be conducted by each district wanting to become a member.

Implementation of the fees determined in the analysis of the financial needs should be stated on the contractual agreement. Outline all fees and requirements and require the district's authorized representative to sign the agreement.

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#### **Prepare the Solicitation**

Develop an acceptable contractual agreement for potential member districts. In this context, acceptable means it contains language that makes the contractual agreement mutually beneficial, and competitive though it may not be perfect for everyone.

Identify the needs of potential member districts. Member districts must provide fair and accurate forecasted quantities and specifications. The questions on the initial member-user survey should have proved helpful in identifying the needs of others.

Develop a mutually agreeable list of products to be purchased based on menus of potential member districts. Ideally this would be an exercise in merging existing product lists and comparing quality of items that do not overlap. Conduct taste tests to get consensus.

Write clear and concise product descriptions specifications. Specify quality standards for items on the product list that are agreeable to all concerned. Identify on the solicitation pertinent information such as the quantity, size, and the frequency and locations of deliveries. Include storage and distribution needs in the solicitation.

Comply with all local, state, and federal laws, regulations, and mandates that apply to purchasing for USDA SNPs. Establish policies and procedures to govern the operations of the cooperative within the constraints of all applicable laws and regulations of each potential member district.

Have clear and appropriate lines of communication between member districts and the cooperative, potential distributors, and manufacturers. Evaluation criteria ***must*** be stated in the solicitation document. It should be numerically quantified with criteria clearly set prior to publishing the solicitation. The frequency of the solicitation must also be in the solicitation. Encourage members to obtain training specifically in the area of school nutrition procurement.

**Remember:** In order to ensure objective vendor performance and eliminate unfair competitive advantage, a person that develops or drafts specifications shall be excluded from competing for such procurements. If unsure of any procurement regulations, consult your local district purchasing expert or your state agency that administers the SNPs for clarification. Also, keep in mind that the larger procurements that are conducted by cooperative purchasing groups often take longer than if one district was procuring for themselves, therefore ample time should be allocated to conduct proper competitive procurements after the formation of the group.

### Cooperative Purchasing Group Interest Survey Template

**Directions:** Before sending the survey to district directors in the area, consider an email to each explaining the plans for a general meeting to consider forming a purchasing cooperative. It is advisable to use a conservative estimate when completing the survey.

This survey is for \_\_\_\_\_ (Identify the product such as bread, canned goods, and paper goods)

What is your total enrollment? \_\_\_\_\_ What is your ADP for lunch? \_\_\_\_\_ What is your ADP for breakfast? \_\_\_\_\_

On average, how many hours a month do you spend on developing product specifications? \_\_\_\_\_ hours

On average, how many hours a month do you spend on purchasing? \_\_\_\_\_ hours

Approximately what is your annual food budget for lunch? \_\_\_\_\_ For breakfast? \_\_\_\_\_

How often do you make food purchases (weekly, bi-weekly, monthly)? \_\_\_\_\_

How many distributors do you use to purchase food? \_\_\_\_\_

List all sources:

How many deliveries do you receive each week? \_\_\_\_\_

Is your food delivered to a central location? (YES or NO)

If not, how many delivery sites do you have? \_\_\_\_\_

Do you know the benefits of belonging to a cooperative purchasing group? (YES or NO)

Would you consider joining a cooperative purchasing group if it could save you time? (YES or NO)

Would you consider joining a cooperative purchasing group if the savings were clear? (YES or NO)

Would you consider joining a cooperative if it gave you access to a greater variety of food? (YES or NO)

Would a membership fee deter you from joining a cooperative? (YES or NO)

Would you like to learn more about the member-based cooperative purchasing group? (YES or NO)

If yes, what day of the week is best for you to attend a 45-minute afternoon meeting? \_\_\_\_\_

*Thank you for your time in completing this survey.*



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## Responsibilities of Being a Member of a Cooperative Purchasing Group

Once you have decided to join or form a purchasing cooperative, make the most of your investment. Be a member in good standing and contribute to the success of the group. Here are some best practices to follow.

- Designate and train an individual who will serve as the liaison between the district and the cooperative purchasing group.
- Gain district support for the designated liaison to participate on committees, attend meetings, and be involved in other activities that may be required by the cooperative purchasing group.
- Develop a master product list. Share it among member school districts. Ideally members will agree on all products on the list. Forecast estimated usage with realistic quantities.
- Attend regular meetings. Participate in activities such as combining product lists and student taste tests.
- Demonstrate the ability to plan menus using foods upon which the group has agreed. A central menu cycle for the cooperative purchasing group is not necessary to operate successfully, but it can reduce paperwork for member school districts. Share menus and related forms.
- Develop quality standards that specify the description of items that will be purchased. It is important to become familiar with the quality standards that are in place for your school district and to compare those with the quality standards that the cooperative purchasing group uses. Learn and understand what those quality standards mean.
- Establish a routine schedule to verify that the items received meet quality standards, and report all identified problems to the designated cooperative officer.
- Provide accurate quantity projections to ensure solicitation integrity.
- Conduct ongoing analysis of velocity reports comparing the estimated quantity provided to the distributor to the actual quantity of product purchased. Best practice is conducting a quick, monthly analysis and a more detailed analysis every three months.

For additional information see the section entitled, Frequently Asked Questions about Cooperative Purchasing Groups.



## Frequently Asked Questions about Cooperative Purchasing Groups

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### **Will I lose control of my program if I join a cooperative purchasing group?**

You should not lose control of your program; however, to realize the cost savings for all, you will have to comply with the needs of the majority of the group. Before joining, you should thoroughly review all factors and decide if a cooperative purchasing group is a real benefit for your district. Some factors to consider include the ability to get the products you need at a cost savings and the similarity of the districts and the group's needs.

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### **What are the expectations of the cooperative purchasing group?**

As a member, you will be expected to be a member in good standing. Your particular time commitments, money, and expertise should be clearly spelled out in your agreement. When all members do not fully participate, they are dependent on the decisions of the members who do participate. Members who do not fully participate may disagree with the decisions that impact the entire group.

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### **What should my application for cooperative purchasing membership and agreement include?**

The membership application should contain the following:

- applicant's request to become a member,
  - signature of the applicant's school food authority,
  - statement of the cooperative's acceptance of the applicant,
  - signatures of the cooperative's president and secretary, and
  - statement of the intent and duty of the member.
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### **Are the needs of my district similar to other members' districts?**

That is something you would find out in your initial research on whether to join. If your district has similar menu items, supply needs, or delivery schedules as the other members' districts, you may find it is beneficial to join the cooperative purchasing group.

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### **What should I consider when looking at menu items?**

You will want to look at your menus and forecast your needs. Many districts have discovered they spend approximately 80% of their food budget on 20% of the menu items. If your district's high volume menu items are included on the solicitation specifications it may be advantageous for your district to consider joining the cooperative purchasing group.

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### **How do existing cooperative purchasing groups work?**

You will have to find out how the existing cooperative purchasing group works in your area. Cooperatives are different around the country. There are some commonalities among cooperatives. Cooperatives operate by acquiring savings for their members with high volume purchasing. Members usually pay a membership fee and adhere to laws and requirements for membership in good standing.

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### **What are the costs to my district when joining a cooperative purchasing group?**

Before deciding to join a cooperative purchasing group and making a logical and justifiable presentation to your district authorities, you must research all costs that are associated with membership: administrative fees, membership fees, additional delivery fees, and any penalties. It is also important to identify whether the quality of menu items will meet or exceed your current standards.

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### **Are membership agreements binding?**

As with any legally signed document, agreements are binding. And, as with any legal document, you should check with your district's business office or legal counsel for the appropriate protocol before signing the agreement. It is also important to understand any additional fees or requirements in case of termination of the agreement.

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### **Where can I go for additional training?**

This resource should be helpful in answering your general questions about cooperative purchasing groups. If you need additional training, you may want to contact other members of the purchasing group, check with your state agency that administers the SNPs, and/or contact your local SNA chapter or NFSMI for information. You may find that your organization's legal department and purchasing department may also be helpful.

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### **Will small operational distributors be affected?**

It is possible small operational distributors will be affected. In order for the cooperative purchasing group to receive the best price for a product, a commitment often has been made to a primary distributor. The small distributors that your district may have done business with in the past, may or may not have the capacity or resources to adequately respond to the much larger cooperative purchasing group solicitation. Your district also has a choice of what items to purchase through the cooperative purchasing group.

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### **Can unique items be added to the list of offered items?**

You will need to check the agreement to see how and if unique items can be added to the list of offered items. Remember, if the distributor can supply it, the item may carry a higher price because of its uniqueness. Please be aware that the addition of new items cannot materially

change the procured contract between the cooperative and vendor. A material change is based on the cooperative making a change to their contract terms that is materially inconsistent with the underlying solicitation document. A material change to a procured contract may require a re-solicitation. Developing written procedures in advance of addressing the addition of new items can assist if and when the situation occurs.

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### **Do cooperative purchasing groups have legal counsel?**

Cooperative groups differ around the country. It is highly recommended to seek an attorney familiar with state cooperative statutes. An attorney's responsibilities are to prepare the organization's guiding documents, check the legality of papers written, write agreements and contracts, borrow money, and assist in making capitalization plans. Even after the cooperative is operating, an attorney should be retained to help ensure the cooperative conforms to applicable laws.

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### **When my district joins a cooperative purchasing group, will I have an equal voice?**

As a member of a cooperative group, your voice should be equal; however, in order to obtain the cost savings associated with the group, the group operates as one. You are encouraged to be an active member, attend meetings, and ask for clarifications on procedures. Clarify when and how new members can join the cooperative purchasing group after the initial application period.

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### **If I join a cooperative group, will I be able to buy local unprocessed products?**

Many school districts prefer to buy local, unprocessed, fresh, or raw food products. Check with the cooperative group you are considering and see if local and/or unprocessed food products are available. The USDA rules now allow for geographic preference in the purchase of local, unprocessed agricultural products.

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### **Does the Cooperative Allow for Farm to School Purchasing?**

Farm to School is becoming very popular. Check with the cooperative you are considering and determine if this type of purchasing is available.

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### **What behavior does USDA prohibit?**

USDA prohibits any restrictive behavior from administrators of the SNPs or their respondents (vendors). The procurement process is intended to offer free and open competition to those who have the capacity to respond to a solicitation. Unethical behavior is forbidden and should not be tolerated. See Title 7 of the Code of Federal Regulations Part 3016.36 for further information.

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### **How do cooperative purchasing groups gain their knowledge?**

Cooperatives pool the knowledge of member buyers who can learn from one another. Each member of a cooperative purchasing group brings to the team knowledge of products and

distributor reliability for the collective benefit of all. Cooperatives across the country are different, as are their operating structures and requirements. Your agreement will identify your role as a member.

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### **What records should I keep and for how long?**

As with any SNP document, you should keep your records for a minimum of three years, plus the current fiscal year. Some records that fall into this category would be your membership application and agreement, all meeting agendas and notes, invoices for fees, and any other papers or forms signed by you or your district authority pertaining to the cooperative group.

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### **How big does a cooperative have to be for volume savings?**

A cooperative purchasing group's lowest possible operating costs occur when its members furnish it with the maximum amount of business it can handle. Once you have an idea of how many school districts will participate, how many similar items will be purchased, transportation, and delivery details, you can determine the cost savings for your district. **Transportation** is the process of moving food and non-food products from one site to another.

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### **How should I respond if distributors offer gifts?**

You should respond in an ethical manner and refuse any gifts or rewards of loyalty. Examples of gifts could be special event tickets, money, or any other forms of special treatment (including incentives that benefit students such as scholarship offers that are not included in the original solicitation) in exchange for doing business with the distributor. Any staff hired to oversee the cooperative should also refuse gifts or awards.

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### **Where does a rebate go?**

A rebate helps offset expenses and acts as a purchasing incentive. All cost reimbursable contracts (including contracts with cost reimbursable provisions) must require the return of all rebates, discounts, and other applicable credits to the SFA. In setting up a new cooperative, a structure must be set up to ensure that each SFA receives its allocable portion of rebates, discounts, and credits. This allocation would be determined based on the SFA's percentage of the purchased amount. Rebates need to be clearly documented and the method and frequency of reconciliation must be explicitly agreed upon.

Some individuals confuse a cooperative purchasing group with a Group Buying Service (GBS). Although the two may appear to have some similarities, differences do occur. A detailed explanation of GBSs can be found in the section entitled, Group Buying Service.

## Group Buying Service

**A Group Buying Service (GBS)** is a term commonly used to refer to an organization that buys on behalf of other entities in larger quantities. A GBS could also be called a purchasing cooperative, purchasing consortium, group buying/purchasing organization, etc.; a GBS can call itself many different names. A GBS can be for-profit or not-for-profit. It is vital that all procurement transactions be conducted in a manner providing free and open competition. This principle fully applies to purchases made through GBS. However, GBSs differ from a cooperative purchasing group, that consists exclusively of school districts and other government entities, because the services of a GBSs must be competitively procured by all member districts regardless of how the GBS is compensated for the value it provides.

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### What if the GBS offers its services for free?

The SFA must seek the advice from the state agency because it is rare that services are actually free. Some examples of what a GBS may propose as free include the following.

- A GBS is a non-profit entity and promises that it will procure goods from a prime vendor on behalf of the SFA for free.
- GBS states it will procure the prime vendor in accordance with the Federal procurement regulations.
- The GBS will draft a solicitation, score solicitations, and manage the contract, etc. on the SFA's behalf for free.

The SFA thinks this is a great deal—procurement is a lot of work and a GBS is willing to do all of the hard work for free. The GBS has staff and other administrative costs, and it recoups monies by charging the procured prime vendor a fee for every case of product the SFA purchases. The GBS retains 75% of the fees charged to the prime vendor and returns 25% to the SFA.

Consider the legal principle bargain for exchange. A contract is an agreement entered into voluntarily by two parties or more with the intention of creating a legal obligation. A valid contract must have consideration (e.g., bargain for exchange). This means that both parties agree to do something (e.g., pay money) or refrain from doing something (e.g., not contract with someone else).

The SFA may not enter into a contractual agreement with an entity for goods or services without adhering to the federal procurement regulations. No matter which procurement option it chooses to use, a CNP participant may not enter into or extend a contract to purchase any item whose price will change on a cost plus percentage basis.

CNP participants may purchase goods and services through group buying services in several ways, including:

- competitively procuring and formally contracting with the group buying service for it to act as either a procurement agent or a supplier of goods and services; or
- participating in a state-procured (competitively) contract with the group buying service, for it to act as either a procurement agent or a supplier of goods and services.

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### **Becoming a member of a GBS**

A CNP participant must always conduct a competitive procurement solicitation before it purchases anything from the group buying service or its suppliers.

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### **Formally contracting with a GBS**

For formal procurements, either the sealed bid or competitive proposal method must be used. In either case, the solicitation documents must identify the CNP participant's membership in the buying service and state its intention to purchase from that organization or its suppliers when their offer is the most responsive. The goods or services provided through the buying service must precisely meet the specifications in the solicitation. The buying service must agree to comply with all terms and conditions of the solicitation and resulting contract. Any price adjustments must not exceed the adjustment factor (if any) in the solicitation. For informal procurements, which fall under the small purchase threshold, this means contacting other suppliers to obtain price comparisons. Written quotes are preferred, with verbal quotes confirmed in writing.

In short, solicitations or quotes from other potential vendors cannot be rejected in order to purchase through the buying service unless it or its suppliers truly offer the best price.

Regardless of the supplier or suppliers used, when a CNP participant's purchases for a single item or related group of items exceeds the small purchase threshold in a one-year period, the participant must aggregate the purchases and conduct a formal procurement in the following year.

The second option requires a formal competitive procurement resulting in a contract. To be considered for a contract award, the buying service would respond to the solicitation just as any other interested supplier would respond. The CNP participant would evaluate the buying service's response, using the same procedures and evaluation criteria for all potential vendors.

To meet responsiveness requirements, the goods or services provided through the buying service must precisely meet the specifications in the solicitation. Since contract pricing methods cannot be established by potential vendors, the CNP participant must state the contract cost method (fixed price or cost reimbursable, with or without a fixed fee) that it will use. A buying service or other potential vendor must accept the contract pricing method that was established by the CNP participant.



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### **State-Procured Contract with the GBS**

The third option permits CNP participants to piggyback on an existing state agency contract with a buying service. The state-procured contract must include the CNP participants in question (i.e., SFAs and school cooperatives), either explicitly or because they belong to the class that is covered by the contract. In a given situation, this could mean that public school districts qualify but not private schools and institutions. For additional information see Policy memo: SP 35-2012: Procuring Services of Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc., which can be accessed at: [www.fns.usda.gov/cnd/governance/Policy-Memos/2012/SP352012os%20.pdf](http://www.fns.usda.gov/cnd/governance/Policy-Memos/2012/SP352012os%20.pdf)

A Food Service Management Company (FSMC) is different from a Group Buying Service and has very specific regulations. To learn more about FSMCs see the section entitled, Food Service Management Companies (FSMCs).



## Food Service Management Companies (FSMCs)

There are several regulatory requirements specific to the SNPs that relate to the procurement of services from a **food service management company (FSMC)**. FSMC and Management Company are used as synonyms throughout this resource. The term FSMC can sometimes be confusing to the SFA and state agency staff, especially if they are also involved in administering the Summer Food Service or Child and Adult Care Food Programs, which use a slightly different definition of an FSMC.

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### Definition of Food Service Management Company

A food service management company is defined as any organization, whether commercial or nonprofit, that contracts with the SFA to manage any aspect of the SNP. If a company contracts to operate or manage some or all of the district's school nutrition functions for example, program meal service, a la carte meal service, afterschool snacks, vending machines, or all school related meal service, it meets the regulatory definition of an FSMC. Also, a company that conducted all food purchasing activities for the SFA, even if the SFA managed the other aspects of its school nutrition, would meet the regulatory definition of an FSMC.

If the SFA contracts with a company to provide all of its fruits and vegetables for the coming school year, that company is not considered to be an FSMC, because it will provide food items only, and does not manage any aspect of the school district's nutrition program. The same would be true if the SFA contracted with a dairy for milk, or with a bakery for bread. The milk and bread suppliers would be considered food vendors, not FSMCs.

State agencies also must review all contracts or contract amendments between SFAs and FSMCs prior to each contract's execution to ensure that such contracts comply with all program requirements. Discretionary, state agency pre-award reviews also may take place. For example, a state may impose a pre-issuance review requirement on the SFA's solicitation for FSMC services and require that the SFA receive state agency written approval of IFBs and RFPs prior to their issuance.

**Note:** Please remember that this discretionary review of solicitations is different from the mandatory requirement for state agencies to review all FSMC contracts and supporting documents prior to the execution of the contract. The latter requirement ensures that contracts and supporting documents (i.e., IFBs and RFPs) are reviewed prior to contract execution to ensure that all necessary contract provisions are contained therein.

State agencies may establish other pre-award review requirements consistent with this section and state requirements.

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## School Nutrition Program Management and Accountability

It's vitally important for SFAs to understand that contracting with a FSMC does not relieve the SFA of its responsibility for the management of the SNPs. Regardless of whether or not the SFA employs an FSMC, the SFA remains responsible for ensuring program accountability and the quality, extent, and general nature of its school nutrition program.

Most importantly, if the FSMC uses funds from the nonprofit school nutrition account improperly, or simply makes mistakes in its management of the nutrition program, it is the SFA—not the FSMC—that will be responsible for restoring the improperly expended funds to the nonprofit school nutrition account.

The regulations of 7 CFR Part 210.16(b) require SFAs to include in their IFBs and RFPs specific sanctions for FSMCs that violate contract terms; and, if the FSMC uses funds from the nonprofit school nutrition account improperly, it will be in violation of its contract with the SFA. Nevertheless, the state agency must hold the SFA accountable for FSMC errors when they result in overclaims, since it holds a program agreement with the SFA and not with the FSMC.

It is essential that the SFA employ a sufficient number of qualified staff to:

- coordinate, monitor, and control school nutrition operations; and
- perform those responsibilities that cannot be delegated to the FSMC.

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## Requirements Related to FSMC Procurements

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### Requirement #1: Review of FSMC/SFA Contract

State agencies must annually review and approve each contract (including supporting documentation) between any SFA and FSMC before execution of the contract by either party in order to ensure that the SFA is complying with all of the regulatory provisions of 7 CFR Part 210.16 pertaining to FSMCs. [7 CFR Parts 210.16(a)(10) and 210.19(a)(6)].

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### What are the provisions in 7 CFR Part 210.16 that state agencies must check to ensure that the SFA is meeting these requirements?

When an FSMC purchases food or other items for the district under its contract, it must do so on behalf of the SFA and must comply with all federal and state procurement requirements that apply to the SFA itself, including returning rebates to the SFA.

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### Why do the regulations require state agencies to annually review and approve each contract between any SFA and FSMC before execution of the contract by either party?

Reviewing contracts and amendments after they were executed (after they have been signed by the SFA and the vendor, when the contract begins and at each renewal) created many problems. Too often, by the time the state agency first reviewed the contract, SFAs had already used solicitations containing unallowable terms and conditions. Similarly, contracts were being

renewed with additional terms that the state agency had never seen. Some of these terms led to unallowable costs which the SFA was then required to return to the state agency. Unfortunately, when the state agency found problems with an executed contract, it was often too late to remedy the problem except when state or local laws allowed the contract to be voided.

On October 31, 2007, regulations were put into effect to minimize the risk of the SFA entering into an unallowable contract, or make unallowable amendments to the contract after its execution. State agencies are now required to review and provide written approval of the SFA's contract with an FSMC—including supporting documentation such as the IFB or the RFP—prior to the initial execution of the contract and prior to each renewal. Thus:

- State agencies should ensure that all contract provisions clearly require that all costs to the program be net of applicable discounts, rebates, and applicable credits.
- State agencies are required to review and approve any amendment to the SFA's contract with an FSMC prior to the execution of any amendment to the contract.
- SFAs must incorporate any changes to the contract required by the state agency. (See 7 CFR Parts 210.16(a)(10) and 210.19(a)(6).)

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## **Requirement #2: Onsite Review of Each SFA Contracting with an FSMC**

The federal regulations require state agencies to conduct an onsite review of each SFA contracting with an FSMC at least once every five years. This allows the state agency to conduct a more thorough review of the SFA's ongoing compliance with the requirements pertaining to FSMCs.

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### **Material Changes**

A material change is a change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough, that, had other respondents (vendor/bidder) known of these changes in advance, they may have bid differently and more competitively.

This means that when the SFA agrees to or allows a winning respondent to make changes to contract terms (including the terms of a contract renewal) that are materially inconsistent with the underlying solicitation document, the SFA has subverted free and open competition by denying all respondents the opportunity to compete under the same terms and conditions. In this situation, the SFA must re-bid the contract.

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### **How is change evaluated and who makes the determination?**

Each SFA contract has different underlying solicitation documents and contract terms. Therefore, states should not enact blanket rulings about a set scenario that would, in all cases, constitute a material change and require the SFA to re-bid their contract. In justifying this to the state, the SFA must also factor in the impact on the total cost *and* total scope of the existing contract. Changes in the scope of the existing contract will most likely result in a financial impact as well.

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**Ensure consistency with the final rule.**

On January 26, 2012, FNS issued the final rule titled *Nutrition Standards in the National School Lunch and School Breakfast Programs*. USDA anticipates that some current contracts between SFAs and FSMCs will not be inconsistent with the new nutrition standards of the final rule; therefore, those contracts would require only nonmaterial changes to ensure consistency with the final rule.

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**How do SFAs determine if the implementation of the final rule will create a material change to current SFA-FSMC contracts?**

State agencies and SFAs must review existing contracts to determine if implementation of the final rule (i.e., new meal pattern requirements) will result in material changes to current contracts. A blanket answer is not acceptable as the determination depends on the initial solicitation and resulting contract (unique for each SFA-FSMC contract).

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**Questions to ask to help determine material change.**

If there was an increase or decrease to the cost of the contract, would the increase or decrease in cost have caused respondents to quote differently if the prospective change had existed at the time of the solicitation?

Would the prospective change materially affect the scope of services, types, and/or volume of food product, in both the solicitation document and resulting contract? For example, the final rule requires schools to serve whole grain-rich products, and specific varieties of vegetables which may already be included in current contracts. If they were not part of the current contract, it may be considered a material change.

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**Renewals are not automatic.**

Per regulations, contracts between SFAs and FSMCs must be no longer than one year in duration with four optional annual renewals. Every SFA should annually review its FSMC contract with no expectation by either party to renew the contract. The state agency and SFA must review the current contract and determine if any prospective changes would result in a material change.

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**What options are available if SFA's implementation of the final rule creates a material change to contract with FSMC?**

**Option 1:** SFA can conduct a separate procurement to obtain the desired deliverable that created the material change. For example, if the current contract does not address whole grain-rich foods, SFA would issue a solicitation to procure additional whole grain-rich foods consistent with the current contract between SFA and FSMC.

**Option 2:** SFA can conduct a new solicitation and ensure that the new solicitation associated with the re-bid contains the appropriate specifications and provisions to ensure conformance to the final rule.

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### **What happens if my re-bid cannot be completed prior to the start of the 2013-2014 school year?**

If a re-bid is deemed necessary based on the implementation of the final rule, the SFA may in the interim amend its current contract in order to ensure full implementation of the final rule until the re-bid can occur. All re-bids must occur prior to the 2013-2014 school year. Both the SFA and FSMC would need to agree to the terms of the amendment.

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### **What if FSMC does not agree to amend the current contract?**

The SFA would need to take immediate action. Immediate action may include:

- termination of the current contract between the SFA and the FSMC in accordance with the termination provisions and issuance of a new solicitation; and
- issuance of a separate solicitation to procure the necessary foods in order to ensure compliance with the final rule consistent with the current contract between the parties.

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### **Timeline for new solicitation**

- The SFA may conduct a procurement at the next feasible juncture if needed.
- State agencies and SFAs must ensure that a new procurement is completed for the 2013-2014 school year.
- A new solicitation must be completed for the 2013-2014 school year.

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### **What about other contracts?**

The same principles and timeframes should apply to all SFA contracts whether with distributors or manufacturers.

While the final decision rests with the state agency, the SFA and state agency should work together to resolve such issues as the SFA is generally in a position to better understand the solicitation and resulting contract. The state agency needs to carefully review the relevant contract and solicitation as well as any state and local requirements to make their assessment regarding the scope of change. If after this process, questions remain or the SFA continues to disagree with the state, they can seek advice from USDA's Regional Office for technical guidance on the federal regulations. Ultimately, it is the state's responsibility to make the appropriate determination.

For additional information refer to: United States Department of Agriculture, Food and Nutrition Service. (February 23, 2012). Procurement Questions and Answers to assist in the implementation of the final rule titled Nutrition Standards in the National School Lunch and School Breakfast Programs, SP\_17-2012, which can be accessed at: <http://www.fns.usda.gov/cnd/governance/Policy-Memos/2012/SP17-2012os.pdf> .

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## Rebates

State agencies are responsible for ensuring that SFAs with FSMC contracts structure and manage such contracts, as required by Federal law. As underscored by the National School Lunch Program-Food Service Management Company Contracts, audit findings, it is critical to make certain that these contracts include the provision, required by 7 CFR Part 210.21(f)(1)(i), that all purchase discounts and rebates be returned to the SFAs' nonprofit school food service account and the appropriate records necessary to ensure compliance are maintained.

Regulations require vendors under cost reimbursable contracts to provide sufficient information to permit the SFA to identify allowable and unallowable costs as well as the amount of all such discounts, rebates, and other applicable credits on invoices and bills presented for payment to the SFA. 7 CFR 210.21(f), 215.14a (d) and 220.16(e). For additional information refer to: USDA FNS (April 5, 2011) Memo Code: SP 01-2011 Revised. Reaffirming the Requirement that School Food Authorities Comply with Federal Regulations Affecting Rebates, Discounts, and Other Applicable Credits in All Cost Reimbursable Contracts which can be accessed at: [http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP01-2011\\_osr.pdf](http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP01-2011_osr.pdf)

Monitoring and oversight of SFA contracts throughout the school year are also essential to ensure SFAs receive the full value of purchase discounts and rebates and are in compliance with Federal law. Failure by a state agency and SFA to undertake necessary oversight and monitoring measures puts Federal funds at risk for both affected SFAs and the state agency. SFAs potentially would not receive the full value of purchase discounts and rebates and FNS could withhold funds from State agencies for failing to enforce these requirements.

For additional information on Food Service Management Companies refer to the following USDA Policy Memos:

USDA FNS (April 19, 2013). Memo Code: SP 35-2013. State Agency Oversight and Monitoring of School Food Authority Contracts with Food Service Management Companies  
<http://www.fns.usda.gov/cnd/governance/Policy-Memos/2013/SP35-2013os.pdf>

USDA FNS. (February 23, 2012). Memo Code: SP 17-2012. Procurement Questions and Answers to Assist in the Implementation of the Final Rule Titled Nutrition Standards in the National School Lunch and School Breakfast Programs.  
<http://www.fns.usda.gov/cnd/governance/Policy-Memos/2012/SP17-2012os.pdf>

USDA FNS. (April 5, 2011) Memo Code: SP 01-2011 Revised. Reaffirming the Requirement that School Food Authorities Comply with Federal Regulations Affecting Rebates, Discounts, and Other Applicable Credits in All Cost Reimbursable Contracts.  
[http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP01-2011\\_osr.pdf](http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP01-2011_osr.pdf)

USDA FNS. (April 2009). Guidance for Contracting with a Food Service Management Company  
<http://www.fns.usda.gov/cnd/guidance/FSMCGuidance-sfa.pdf>



USDA FD. (January 25, 2011). Memo Code: FD-080: National School Lunch Program (NSLP), Summer Food Service Program (SFSP), and Child and Adult Care Food Program (CACFP); Guidance in Crediting for, and Use of, Donated Foods in Contracts with Food Service Management Companies [http://www.fns.usda.gov/fdd/policymemo/pmfd080rev\\_NSLP-SFSP-CACFP\\_DonatedFoodswithFSMCsJan2011.pdf](http://www.fns.usda.gov/fdd/policymemo/pmfd080rev_NSLP-SFSP-CACFP_DonatedFoodswithFSMCsJan2011.pdf)

USDA FN. (October 22, 2010). Memo Code: SP \_05 - 2011 Further Clarification in Crediting for, and Use of, Donated Foods in Contracts with Food Service Management Companies

Many school districts participate in a farm- to-school program or local purchasing. SFAs under contract with a Food Service Management Company should check with their state agency before participating in a locally grown farm-to-school program. This program is discussed in the section entitled, Purchasing Local Foods for Use in Federal School Nutrition Programs.



## Purchasing Local Foods for Use in Federal School Nutrition Programs

**A**cross the country, an increasing number of SFAs have begun to source more foods locally, while schools have begun providing complementary educational activities that emphasize food, farming, and nutrition. This nationwide movement to enrich students' bodies and minds while supporting local economies is often referred to as farm to school. The term encompasses efforts that connect schools with local or regional producers in order to serve local or regionally produced foods in schools; hands-on learning activities such as school gardening, farm visits, and culinary classes; and integration of food-related education into the regular standards-based classroom curriculum.

In terms of procurement, bringing more locally sourced, fresh fruits and vegetables into school cafeterias is often a seminal activity of farm to school efforts. However, regional offerings (and therefore economic opportunities for local food producers) can span the school meal tray and include everything from the salad bar and fresh fruit and vegetable servings to the wheat in the pizza crust, beans in the chili, rice in the stir fry, turkey in the sandwiches, and cheese in the quesadillas. Thus, farm to school includes all types of producers, such as farmers, ranchers, and fishermen, as well as many types of food businesses, including food processors, manufacturers, distributors and other value-added operations that enable school meals to showcase the full range of food products available in their respective regions.

With our school systems' diverse operations and demographics, farm to school activities can differ greatly across communities, and there are many pathways to local procurement. The first part of this section discusses potential sources of local foods; the second part covers the mechanisms by which SFAs can source and procure local foods while staying in full compliance with federal procurement regulations, including by applying a geographic preference.

As with any procurement process, purchasing local products requires a significant amount of planning and forecasting. Before procuring local foods, an SFA should start by finding out what grows locally in its region, and then conduct a menu audit to determine what foods currently on the menu can be replaced with local items. SFAs with well-established farm to school programs often develop entirely new recipes and menus based on local products and food traditions or use the summer months to preserve the local abundance, but it is often easiest to start simple by replacing non-local ingredients with local ones. Review the menu and forecasting sections of this manual for additional information on those topics.

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### Sources of Local Food

While the term farm to school might conjure images of a farmer delivering produce straight to the backdoor of a school cafeteria, local foods do not always travel straight from the field, pasture, or water to the school lunch tray. While some schools buy directly from producers, others rely on third parties to source, process, and deliver local foods.

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### **Directly from the Producer**

Some schools do choose to purchase foods directly from local farmers, ranchers, and fishermen. However, even when getting food straight from the source, there are many ways to go about it. Some schools set up contracts with producers well in advance of the growing season, establishing a specific volume of product they intend to buy at a specific price, while others buy weekly through farmers' markets, produce auctions, or directly from individual producers. Sometimes producers deliver straight to schools, and other times schools purchase or pick up produce at the farm or a farmers' market, or even harvest produce themselves at U-picks.

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### **From Producer Cooperatives or Food Hubs**

In some areas, producers have organized into cooperatives, aggregating their products and combining their marketing efforts. These groups are more likely than a single producer to be able to fulfill large orders, deliver directly to schools, and to provide some minimal processing. Some, but not all, cooperative efforts to pool products are known as 'food hubs.' Some food hubs act just as a distributor would, meaning schools are able to order directly from the food hub for a variety of products that may come from several different producers in their area. Buying from a cooperative of farmers, regardless of how the collaboration is structured, may cut down on some of the administrative burdens of working directly with a different producer for every different kind of local product an SFA wants to procure.

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### **From Food Processors**

SFAs may also opt to purchase local foods that have already been turned into items like salsa, carrot chips, or even full meals by food processors. This is an especially good option when kitchen capacity or staff time is limited. A central kitchen can also be considered a food processor and may use some local products in the meals it prepares for an SFA.

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### **From a School Garden**

While school gardens rarely produce enough food to make up a significant portion of a school meal, fruit, vegetables, eggs, honey, and other products grown on-site at school can supplement salad bars and be served as snacks. School nutrition programs may use funds from the nonprofit school food service account to purchase seeds, fertilizer, watering cans, rakes, and other items for the school garden. A school may also sell food grown in their school garden for use in the school nutrition programs, or a la carte, to parents, to PTA members, at a roadside stand. Before operating a school garden or using garden-grown foods in school meals, SFAs need to familiarize themselves with federal, state, and local health and sanitation requirements.

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### **Procuring Local Foods**

So now that you have a sense of where local foods can be sourced from, how do you actually procure the products you want in accordance with federal regulations? Again, there is a veritable cornucopia of options.

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### **Purchasing Local Unintentionally**

Some products, because of their characteristics, are more likely to be local than others. For example, fluid milk is produced in almost every state, and since fluids are expensive to transport, local milk is likely to be cheaper; therefore, most milk is relatively local. Likewise, if an SFA in Southern California chooses to purchase avocados, chances are they will be from Southern California. Some USDA Foods may also be considered local to your school.

The point is that oftentimes, SFAs are buying local foods through distributors without even knowing it. Working with distributors to find out where food is coming from will allow SFAs to include these unintentionally local foods in their tally of local purchases, and might enable an SFA to reach out to those local suppliers to learn more about their operations, invite them into the classroom for a talk.

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### **Purchasing Local by Including Related Characteristics in Specifications**

Specifications may be written for a wide variety of qualitative factors designed to complement a preference for local products. These factors can be provided as either required or preferred specifications and may include:

- freshness,
- ripeness,
- time elapsed between harvest and delivery, and
- local varieties.

For example, including a specification that foods be fresh (harvested within a day or two of delivery) is one way to increase the likelihood that a local vendor will win the contract. Another way is for an SFA to choose to purchase a type of seafood that is only caught in waters off the coast of its state (or a freshwater fish that's only available in local lakes and rivers), or a variety of apple that is only grown by farmers in the SFA's region.

If an SFA chooses to use qualitative factors to potentially increase local purchases, it should be careful that those factors do not unreasonably limit competition by surveying the market to ensure that it will receive enough local bids.

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### **Purchasing Local by Approaching Only Local Sources**

If an SFA is making a purchase that falls under its small purchase threshold it can choose three (or more) local producers from whom to get quotes instead of issuing a formal IFB or RFP. This can be done by calling local producers, going to the farmers' market and talking to potential vendors, or by posting specifications on some sort of local email list or on a flier somewhere that producers will see it.

While SFAs cannot intentionally split purchases in order to fall below the federal/state/local small purchase threshold, there are many legitimate reasons to split bids. It is typical for an SFA to split purchases based on inherent differences in foods such as shelf life, delivery methods, seasonality, and other characteristics, or if it is procuring for a Harvest of the Month program or special seasonal menu. Additionally, there may be some instances in which the characteristics of a product or market support the need to separate selected products from the overall food procurement. For example, milk and bread are commonly procured separately because there are fundamental differences between them and other food products. Some of these differences include: shorter shelf-life, specialized pricing mechanisms, and durability. Similarly, an SFA may consider fresh produce a separate market and choose to separate its procurement.

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### **Purchasing Local by Working with a Food Service Management Company**

An SFA should include their desire for local products in the solicitation for services from a management company. That way, the FSMC's responsiveness to the request for local products can be considered in the SFA's selection. SFAs must tell the FSMC how and when they wish to have local food purchased and how local foods are to be used in the meals provided through the FSMC. This can be stipulated in the original FSMC solicitation or in subsequent contract amendments; considerable attention must be paid to ensure amendments do not constitute a material change. Oftentimes, FSMCs are happy to source local foods but do not know where to start; SFAs can help by connecting them with local growers or growers' associations, or state, local, and non-profit partners who might be able to assist in identifying local producers.

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### **Purchasing Local by Requesting Local Foods from a Competitively Procured Distributor**

Distributors are an integral part of school nutrition programs. Many schools rely on broad line distributors to deliver the majority of their food since they provide a one-stop shop, deliver directly, and hold liability insurance. Some SFAs choose to contract with a produce distributor that provides the same services, but only supplies fruits and vegetables. When developing a solicitation for a distributor, SFAs should include what products they would like to receive from local sources, the quantities desired, and indicate if local products are preferred at all times or only in certain months. SFAs also need to include a definition for local. Once a distributor has been competitively procured, an SFA may select any product from the contract list. SFAs may want to include both local and non-local varieties of a product in the contract list to ensure local products are provided when available, and also to ensure that a non-local product is on-hand, when a local variety is not in season.

Oftentimes, distributors already offer local products, even when local is not specified in the contract, and all an SFA needs to do is order the product. Some distributors may not provide regionally-sourced products yet, but as with an FSMC solicitation, an SFA can include their desire for local products into their RFA for a distribution contract; once the contract is established, the SFA can even suggest specific producers for the distributor to consider working with.

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### **Purchasing Local through the DoD Fresh Program (DoD Fresh)**

States and SFAs can elect to spend a portion of their USDA Foods entitlement money on fresh fruits and vegetables through the DoD Fresh Program, operated by the Department of Defense. To supply fresh fruits and vegetables, DoD contracts with over 45 produce vendors across the country. Although DoD Fresh vendors are not required to purchase local produce, they are strongly encouraged to do so. In addition to spending commodity entitlement funds through DoD Fresh, states can also elect to use section 4 and 11 funds on DoD Fresh purchases. Each DoD Fresh prime vendor updates the online FFAVORS catalog for their region of service on a weekly basis and marks locally procured products. Local in DoD Fresh has three definitions: 1) the product is from within 400 miles, 2) the product is from within the state, and 3) the product is from within the area of service. If an SFA is looking to purchase additional local products through DoD Fresh, it should work with the state agency that manages the program to request additional local options from the prime vendor, and even to suggest specific producers or producer groups that the prime vendor might work with.

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### **Purchasing Local by Applying a Geographic Preference**

The 2008 Farm Bill directed the Secretary of Agriculture to encourage institutions receiving funds under this Act and the Child Nutrition Act of 1966 to purchase unprocessed agricultural products, both locally grown and locally raised, to the maximum extent practicable and appropriate, and to allow institutions receiving funds under this Act and the Child Nutrition Act of 1966, to use a geographic preference for the procurement of unprocessed agricultural products, both locally grown and locally raised.”

This gave USDA/FNS the authority to issue a final rule on geographic preference which allows the purchasing institution (i.e., the SFA or the state agency purchasing on behalf of the SFA) to apply a geographic preference procurement option when procuring unprocessed locally grown or locally raised agricultural products. Any SFA/institution/sponsor participating in the federal CNPs has the option to apply a geographic preference when procuring unprocessed, locally grown or raised agricultural products. There is no requirement that institutions must purchase locally grown and locally raised agricultural products or apply a geographic preference in the procurements of these products. This provision applies to operators of all of the Federal Child Nutrition Programs. The final rule for the Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs clearly defined what qualifies as an unprocessed agricultural product, and also clarified that SFAs have broad discretion when defining local.

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## Types of Products

Geographic preference can be applied to a wide array of products provided those products meet the definition of unprocessed or minimally processed at 7 CFR Part 210.21 (g)(2). Allowable products include, but are not limited to:

- fruits;
- vegetables;
- meats (Including fresh or unprocessed frozen products and formed products, such as patties. The geographic preference rule does not apply to any meat products that have been cooked, heated, canned or that have any additives or fillers.);
- fish (Including whole, form, filets or nuggets. The geographic preference rule does not apply to any seafood products that have been cooked, heated, canned or that have any additives. It does apply to fresh and frozen fish, including fish filets that contain no additives or fillers.);
- poultry (Including whole, form, or various cuts.);
- dairy (The geographic preference rule does not apply to fluid milk products that contain additives, such as chocolate or strawberry flavored milks, nor any processed dairy products such as cheese, yogurt, etc.);
- eggs; and
- grains (Including quinoa, rice, barley, etc. in whole form and other grains in ground form such as flour.)

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## Unprocessed Foods

The ability for an SFA to apply a geographic preference applies only to unprocessed locally grown or raised agricultural product. Unprocessed products are those that retain their inherent character. The following food handling and preservation techniques are *not* considered to change a product's character:

- cooling;
- refrigerating;
- freezing;
- size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, or grinding;
- forming ground products into patties without any additives or fillers;
- drying/dehydration;
- washing;



- packaging (e.g., placing eggs in cartons), vacuum packing, and bagging (e.g., placing vegetables in bags or combining two or more types of vegetables or fruits in a single package);
- addition of ascorbic acid or other preservatives to prevent oxidation of produce;
- butchering livestock and poultry;
- cleaning fish; and
- pasteurizing milk.

Unallowable food handling and preservation techniques include heating and canning. That means, for example, that an SFA can use the geographic preference procurement option to procure local tomatoes and onions for tomato sauce, but not to procure the tomato sauce itself since the sauce would have been heated.

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### How to Define Local

There are many ways that an SFA may decide to define the term local depending on the unique geography and climate where it is located, and on the abundance of local food producers. Popular ways to define local include within a certain number of miles from the school, within the state, or within the county. Also, a definition of local may include more than one state (e.g., Georgia, Alabama, and Florida) or discrete parts of several states (e.g., specific counties in southwest Washington, specific counties in northeast Oregon, and specific counties in Idaho).

Some SFAs opt to define local differently for different types of products. For example, an SFA might decide that because there are so many fruit and vegetable producers within their county, local fruits and vegetables must come from within county lines. However, if the county has only one dairy, then local milk, cheese, and yogurt might come from anywhere in the state. Involving school nutrition staff, local growers, food distributors, and others in helping define local ensures that the definition suits the SFA's needs.

Also, note that geographic preference follows the agricultural product, not the location of the respondent, so it is irrelevant where the respondent's business is incorporated or has a principal place of business.

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### Who Defines Local

Many state and/or local governments have adopted definitions of local such as within the state or within the county. An SFA/institution/sponsor electing to use its federally conferred option to indicate a geographic preference when sourcing food for the meal program **is under no obligation** to adopt any definition for local that might be inexistence in its local areas. Only the SFA, or state agency making purchases on behalf of the SFA, can determine the definition of local. Thus, any attempted restriction to make decisions regarding how to define local for purposes of the geographic preference procurement option would be inconsistent with federal law and unallowable.

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## Geographic Preference and Competition

Generally speaking, any price preference impacts free and open competition. However, geographic preference may have a greater or lesser impact on free and open competition depending on the characteristics of the market. The SFA's application of the geographic preference option must leave an appropriate number of qualified firms, given the nature and size of the procurement, to compete for the contract, as it is imperative that the SFA does not *unnecessarily* restrict free and open competition. For example, indicating a preference for products grown within 5 miles when only one farm meets that definition, would be considered an unreasonable limit on competition. However, if 100 farms meet that definition, the preference would not result in an unreasonable limit on competition.

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## Using Geographic Preference in a Solicitation

The federal regulations do not prescribe the precise way that geographic preference should be applied, or how much preference can be given to local products. There are a variety of ways to apply geographic preference and one way is not considered better or more effective than another. One approach is to award a percent preference or a certain number of points for products produced within the state. Another way is to use a tiered approach for awarding preference—for instance, awarding 5 extra points to vendors with products grown within the state, while awarding 8 extra points to vendors with products grown within 150 miles. Regardless of the approach used, the solicitation document must clearly outline how all bids will be evaluated, including the application of geographic preference in the scoring criteria.

The following example demonstrates how an SFA might use preference points in a solicitation for products. In this case, respondents offering a local product receive 10 geographic preference points, with each point translating to one cent off of the bid price. Therefore, if one or more of the responsive respondents with the lowest price meet the geographic preference, 10 cents will be taken off of their respective prices. (*Note:* Deducting 10 cents from the prices of responsive bidders that met the geographic preference only applies to determining the winning respondent and would not affect the actual price paid to the respondent.) In this example Respondent 2 meets the geographic preference and is awarded 10 additional points, which translates into deducting 10 cents from Respondent 2's price. This makes Respondent 2 the lowest bidder.

Geographic Preference			
Respondent	Price	Meets Geographic Preference	Price with Preference Points
Respondent 1	\$1.97	No	\$1.97
Respondent 2	\$2.05	Yes (10 Points)	\$1.95
Respondent 3	\$2.03	No	\$2.03

## Terms and Definitions

### Agent

An agent is a person who is authorized to act for another through employment, by contract, or apparent authority. A School Food Authority (SFA) can contract with a Food Service Management Company (FSMC) to manage its food services and act as its procurement agent for acquiring its goods and services. The SFA must ensure that its procurement solicitation and contract used to hire the vendor identifies the scope of duties the FSMC must fulfill and the FSMC's responsibilities as the agent of the SFA.

### Aggregate Award

An aggregate award is the process of awarding a contract by categories for like items. Examples include awarding all the canned foods, staples, frozen foods, milk, other dairy products, or bakery items for a specific period of time.

### Agricultural Marketing Service (AMS)

The U.S. Department of Agriculture's Agricultural Marketing Service (AMS) administers programs that facilitate the efficient, fair marketing of U.S. agricultural products, including food, fiber, and specialty crops.

### Arms-Length Transaction

An arms-length transaction is a transaction in which the parties are dealing from equal bargaining positions; neither party is subject to the other's control or dominant influence, and the transaction is treated with fairness, integrity and legality.

### Average Daily Participation (ADP)

The Average Daily Participation (ADP) for the National School Lunch and School Breakfast Program is based on attendance rather than enrollment. Calculating ADP in this manner is considered to be fairer to schools as it does not include children that do not eat lunch/breakfast (i.e., part-day kindergarteners) in the calculation.

### Bond

A bond is an insurance agreement pledging surety for financial loss caused in connection with the contract. Essentially, a bond provides assurance to the school district that, if a loss occurs in connection with a contract related to their school nutrition operations, the loss will be covered to the extent agreed upon in the bond.

### Brokers

Brokers are independent sales agents who negotiate sales for manufacturers by working with food distributors and school nutrition operations. The broker assists manufacturers by introducing new products to the school nutrition market. Brokers can assist the SFA staff by providing samples for taste testing to the districts.

## Buy American

The Buy American provision (in section 12(n) of the National School Lunch Act) requires schools to purchase, to the maximum extent practicable, domestic commodities and products. A domestic commodity or product means an agricultural commodity that is processed in the United States, and/or a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. Purchases made in accordance with the Buy American provision must still follow the applicable procurement rules calling for free and open competition. Any entity that purchases food or food products on behalf of the School Food Authority (SFA) must follow the same Buy American provisions that the SFA is required to follow.

## Capitalization

Capitalization is the amount and source of money needed to start and operate a business like a cooperative purchasing group.

## Child Nutrition (CN) Labeling Program

The U.S. Department of Agriculture (USDA), Child Nutrition (CN) Labeling Program provides food manufacturers the option to include a standardized food crediting statement on their product label. Labels must be authorized by Food and Nutrition Service (FNS) prior to use and manufacturers must have quality control procedures and inspection oversight that meet the FNS requirements. Products produced in accordance with the CN Labeling Program are generally purchased by providers for USDA meal programs. For additional information see

<http://www.fns.usda.gov/cnd/cnlabeling/default.htm> .

## Code of Conduct

A code of conduct is a set of rules outlining the responsibilities of, or proper practices for, an individual or organization. Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. A SFA must have a code of conduct governing the performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds. In addition, this code governs the methods of procurement, establishes the requirement that the SFA perform a cost or price analysis for every procurement (including contract modifications), and determines which contract clauses and certifications are required in the SFA's contracts.

## Collective Purchasing

Collective purchasing is sometimes referred to as cooperative purchasing and occurs when a group of consumers buys from a particular supplier in order to reduce costs and increase quality.

## Competitive Proposals (previously known as Competitive Negotiation)

Competitive proposals [i.e. a Request for Proposals (RFP)], solicit a technical proposal that explains how the prospective vendor will meet the objectives of the solicitation and a cost element that identifies the costs to accomplish the technical proposal. While price alone is not the sole basis for award, price remains the primary consideration when awarding a contract under the competitive proposal method.

### **Competitive Sealed Bidding**

Competitive Sealed Bidding is a formal method of procurement in which sealed bids are publicly solicited [i.e. through an Invitation for Bid (IFB)], resulting in the award of a fixed price contract to the responsible vendor/bidder whose solicitation is responsive to the IFB, conforms to all the material terms and conditions of the IFB, and is lowest in price. In this case, the IFB must be publicly advertised, and solicitations must be solicited from an adequate number of known suppliers, providing them with sufficient time to respond prior to the date set for opening the solicitations.

### **Conflict of Interest**

A conflict of interest is any action that allows a person to benefit at the expense of the public interest or the expense of their employer.

### **Contract/Bidder**

A contract is a formal, legally enforceable agreement between a buyer (client) and a seller (vendor) that establishes a legally binding obligation for the seller to furnish goods and/or services and for the buyer to compensate the seller. A contract must clearly and accurately describe the goods, products, and/or services to be delivered or performed and the terms and conditions of the agreement. In the case of School Nutrition Programs, a contract is executed by the authorized representatives of the SFA and the vendor that calls for the provision of services, materials, supplies, and/or equipment by the vendor in accordance with all conditions and specifications in the solicitation/proposal documents for a price to be paid by the SFA prior to execution.

### **Vendor**

A vendor/bidder, also referred to as a respondent, is a commercial enterprise, public or nonprofit private organization, or individual that enters into a contract with a School Food Authority.

### **Contract Administration System**

The contract administration system refers to the policies and procedures the School Food Authority has in place to ensure that vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

### **Contracting Agency**

A contracting agency is the grantee or subgrantee that awards the procurement contract.

### **Cooperative Purchasing**

Cooperative purchasing occurs when a group of people join together to accomplish all or part of the steps in the purchasing task. In this reference, a purchasing cooperative consists of a group of school districts. Cooperative purchasing is a system that involves a group purchasing products, reducing costs, and improving the quality of products and services available to members.

## Cost Index

A cost index is a price adjustments based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the (fixed) contract. When using this type of contract, it is important to clearly state that price adjustments should reflect both increases and decreases in the identified index. Additional information on government types of contracts can be located at [https://www.acquisition.gov/far/html/Subpart%2016\\_2.html](https://www.acquisition.gov/far/html/Subpart%2016_2.html) .

## Cost Reimbursable Contract

A cost reimbursable contract is formal, legally enforceable contract that reimburses the vendor for costs incurred under the contract but does not provide for any other payment to the vendor, with or without a fixed fee. In a cost reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the vendor net of all discounts, rebates, and other applicable credits accruing to or received by the vendor.

## Distributor

A distributor is a commercial food company that purchases, receives, and/or stores commercial food products. Distributors sell, deliver, and bill the Recipient Agency for goods and/or services provided. A distributor sells the products made by manufacturers.

## Electronic/E-Procurement Procurement

Electronic/E-Procurement Procurement is the term used to describe the use of electronic methods at every stage of the purchasing process, from identification of solicitation requirements to payment, and to potentially establish contracts.

## Ethics

Ethics can be defined as the moral standards individuals use to guide decisions in their personal and professional lives. In the business world, ethical behaviors are practices that promote free and open competition. School nutrition professionals have a responsibility to act ethically in accordance with all federal, state, and local guidelines.

## Escalator/De-escalator Clause or Market-based Pricing

Escalator/De-escalator Clause or market-based pricing are predetermined provisions in a contract stipulating specific conditions for an increase or decrease in price.

## Execution of Contracts

To execute a contract is to complete and formally sign the legal document. For school nutrition purposes, it is the official signing of the contract by the School Food Authority and the vendor which indicates that the contract has begun (or has been renewed). Before any contract or amendment to a new or existing food service management company (FSMC) contract is executed, a state agency must review and approve the contract terms and assure that the SFA has incorporated all state agency required changes into the contract or amendment.

### **Feasibility Analysis**

A feasibility analysis is an evaluation or analysis that is conducted to assess the potential impact of a proposed project or program. Its purpose is to assist in the decision making process to determine whether to implement the project or program.

### **First-In-First-Out (FIFO)**

First-In-First-Out (FIFO) is the process of rotating the older product to the front and the newer items to the back of the shelf. The age of the item is based on the manufacturer's pack date and not the date on the receipt.

### **Fixed Price (Fee)**

A fixed fee is an agreed upon amount of money that is fixed at the inception of a cost reimbursable contract. In a cost reimbursable contract, the fixed fee includes the vendor's direct and indirect administrative costs and profit allocable to the contract.

### **Food and Nutrition Service (FNS)**

The Food and Nutrition Service (FNS) administers the nutrition assistance programs of the U.S. Department of Agriculture (USDA). The mission of FNS is to provide children and needy families with better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts.

### **Food Service Management Company (FSMC)**

A food service management company (FSMC) is defined as any organization, whether commercial or nonprofit, that contracts with a School Food Authority (SFA) to manage any aspect of the school nutrition program (SNP).

### **Food Supply Chain**

The food supply chain is a group of stakeholders who have specific responsibilities involved in the procurement process. Each stakeholder operates as an independent business and each has specific sustainability goals. The school nutrition food chain includes the SFA staff, the distributor, the manufacturer, and the U.S. Department of Agriculture (USDA).

### **Forecasting**

Forecasting is the process of analyzing current and historical data to determine future trends. In the case of school nutrition programs, forecasting involves predicting and estimating the goods, works, and services needed in specified areas for the coming year, and/or assessing needs by reviewing current procurement activities. Forecasting allows for procurement plans to evolve each fiscal year.

### **Free and Open Competition**

Free and open competition means that all suppliers are playing on a level playing field and have the same opportunity to compete. Procurement procedures may never unduly restrict or eliminate competition.

## Grade Standards

Grade standards are USDA quality standards and are based on measurable attributes that describe the value and utility of the products. U.S. Grade Standards provide a uniform language for describing the quality and condition for meat, poultry, fresh fruits and vegetables, and processed fruits and vegetables. While safety inspections are mandatory, the federal government does not require that all food products are graded.

## Grantees and Subgrantees

A grantee means the government or other legal entity to which a grant is awarded and is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. A subgrantee is the government or other legal entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided.

## Group Buying Service (GBS)

A Group Buying Service (GBS) is a commonly used term to refer to an organization that buys on behalf of other entities in larger quantities. GBS could also refer to a purchasing cooperative, purchasing consortium, group buying/purchasing organization, etc.; a GBS can call itself many different names. A GBS can be for-profit or not-for-profit. It is vital that all procurement transactions be conducted in a manner providing free and open competition. This principle fully applies to purchases made through GBS.

## Incentives

Incentives are rewards for commitment.

## Invitation for Bid (IFB)

An Invitation for Bid (IFB) is a type of solicitation document used in competitive sealed bidding in which the primary consideration is cost; the expectation is that competitive bids will be received and an acceptance (award) will be made to the responsive and responsible vendor/bidder whose bid is lowest in price. An IFB is a formal method of procurement that uses sealed bidding and results in a fixed price contract with or without adjustment factors. The IFB must be publicly advertised; and bids shall be solicited from an adequate number of known suppliers, providing them with sufficient time to respond prior to the date set for opening the bids. Also, the IFB should describe the minimum standards expected of a responsible vendor/bidder in measurable terms.

## Just-in Time (JIT)

**Just-in Time** (JIT) is the delivery of food and supplies just in time for food preparation; usually once per week or longer based on the most cost effective delivery size.

## Lead Time

Lead time is the amount of time necessary for the distributor to prepare and deliver the product to the district. Generally, the more lead time that can be provide a distributor, the most cost-effective price for the product. A longer lead time may be necessary for special ordered and fresh products.



### **Less than Arms-Length Transaction**

A less than arms-length transaction occurs when a person responsible for making a purchase and appears to have a stake in the outcome is able to control or substantially influence the actions of others. This may include agreements between divisions of an organization; organizations under common control through common officers, directors or members; and an organization and a director or employee of the organization and his immediate family.

### **Manufacturers**

Manufacturers are the companies responsible for processing raw products, developing new products, and sending finished products to distributors. In some cases, customers are allowed to directly purchase from the manufacturer when volume warrants.

### **Material Change**

A material change is a change made to a contract after the contract has been awarded that alters the terms and conditions of the contract substantially enough, that, had other respondents (vendor/bidder) known of these changes in advance, they may have bid differently and more competitively.

### **National Food Service Management Institute (NFSMI)**

The National Food Service Management Institute (NFSMI) is located at The University of Mississippi, Oxford campus. The mission of NFSMI is to provide information and services that promote the continuous improvement of child nutrition programs.

### **Noncompetitive Proposal**

Noncompetitive proposal is a procurement method used when competition is deemed inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies.

- The item is available only from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- The awarding agency authorizes noncompetitive proposals.
- After solicitation of a number of sources, competition is determined inadequate.

Negotiations must include both price and terms using the same procedures that would be followed for competitive proposals.

### **Non-bid Item**

A non-bid item is a food or service good that is not part of the specifications for the bid.

### **Nonprofit School Nutrition Account**

The nonprofit school nutrition account is the restricted account in which all of the revenue from the school nutrition operations conducted by the School Food Authority principally for the benefit of school children is retained. This account is used only for the operation or improvement of the nonprofit school nutrition operation. Additionally, any money earned from the school nutrition operation can be used only to operate or improve the program.

### **Offeror**

An offeror is the entity that responds to a Request for Proposal (RFP) for the purpose of providing a product or service. An offeror is also referred to as a respondent or vendor.

### **Office of Management and Budget (OMB)**

The Office of Management and Budget (OMB) issues broad, government-wide financial requirements that affect the school nutrition programs (SNPs) and OMB circulars that explain these financial requirements.

### **Online Bidding Service**

An online bidding service is a website in which a purchasing cooperative can make a solicitation through the Internet.

### **Ordering**

Ordering is the process of communicating the name of the product, the product specifications, the code numbers, the quantities, and the delivery date and time for a product to be delivered by the vendor.

### **Order Placement Calendar**

An order placement calendar is a planning tool that identifies when to order food and supplies for the school nutrition operation. The calendar includes the name of the vendor, the menu period dates, the date the item is to be served, the order date, and the required delivery date. Generally the calendar is developed annually and is updated accordingly as items are added or deleted from the menu.

### **Par Stock**

Par stock is a predetermined inventory quantity for a particular item and serves as an indicator on when to reorder the product.

### **Performance-Funded Grants**

A grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the federal government to an eligible grantee. A local program operator's entitlement to funding from its administering agency is generally a function of the categories and types of service provided. Therefore, because reimbursement in the school nutrition programs (SNPs) is based on the number of meals served, the programs are said to be performance funded.

### **Procurement**

Procurement is a multi-step process for obtaining the most responsive goods, products, and/or services at the best possible price. The steps in this process are planning, writing specifications, advertising the procurement, awarding the contract, and managing the contract.

## Proprietary Products

Proprietary products are manufactured products ordered strictly for a particular program, or are unique to a manufacturer.

## Purchasing Association

A purchasing association is the relationship between a manufacturer, a distributor, and a cooperative purchasing group.

## Rebates

Rebates are monetary returns. The regulations require vendors under cost reimbursable contracts to provide sufficient information to permit the SFA to identify allowable and unallowable costs, as well as the amount of all such discounts, rebates, and other applicable credits on invoices and bills presented for payment to the SFA. [7 CFR 210.21(f), 215.14a (d) and 220.16(e).]

## Recipient Agency (RA) Agreement

Under a Recipient Agency (RA) agreement, the RA, school, or other eligible agency enters into an agreement with the processor. This kind of arrangement requires the approval of the distributing agency. Once approved, the RA may purchase end products from that processor. A RA agreement should be used after the agency has completed its procurement process.

## Request for Proposal (RFP)

A Request for Proposal (RFP) is a type of solicitation document used for the formal procurement method of competitive proposals. The RFP identifies the goods and services needed and all significant evaluation factors. The RFP is publicized and is used to solicit proposals from a number of sources. Negotiations are conducted with more than one of the sources submitting proposals, and either a fixed price or cost reimbursable type contract is awarded. Competitive proposals may be used if conditions are not appropriate for the use of competitive sealed bids.

## Respondent

A **respondent**, also referred to as a vendor/bidder, is a commercial enterprise, a public or nonprofit private organization, or an individual that responds to a solicitation and potentially enters into a contract with the SFA. To be considered responsible, a vendor must be capable of performing successfully under the terms and conditions of the contract

## Responsive and Responsible Respondent (Vendor/Bidder)

To be considered responsive, a respondent must submit a response to the Invitation for Bid (IFB) or Request for Proposal (RFP) that conforms to all material terms and conditions of the solicitation. To be considered responsible, a respondent must be capable of performing successfully under the terms and conditions of the contract. In order to be awarded a contract, a respondent must be responsive and responsible.

## Revenues (Nonprofit School Nutrition Operations)

Revenue, when applied to nonprofit school nutrition operations, means all monies received or accrued by accruing to the nonprofit school nutrition program (SNP) in accordance with the state agency's established accounting system, including but not limited to, children's and adults' payments, earnings on investments,

other local revenues, state revenues, and Federal cash reimbursements. Revenues received by the nonprofit school nutrition account are to be used only for the operation or improvement of such programs.

### Run Number

The production run number is the code that identifies the production plant, the date, the shift, and the production line that manufactured the product. This number is not printed on the label but rather stamped on the case at the time the product is manufactured.

### School Food Authority (SFA)

The **School Food Authority (SFA)** is the governing body responsible for the administration of one or more schools, and has legal authority to operate the National School Lunch Program and/or School Breakfast Program.

### School Food Authority Staff

The SFA staff is a group of internal stakeholders representing the school district's best interest. The team may include: the School Food Authority; the school nutrition director; the managers; the school nutrition staff; the business manager; a procurement officer; and the school board members.

### School Nutrition Association (SNA)

Recognized as the authority on school nutrition, the School Nutrition Association (SNA) has been advancing the availability, quality and acceptance of school nutrition programs as an integral part of education since 1946. The School Nutrition Association is the only professional association dedicated solely to the support and well being of school nutrition professionals in advancing good nutrition for all children.

**School Nutrition Programs (SNP)** include: School Breakfast Program (SBP); National School Lunch Program (NSLP); After School Snack Program (ASSP); Fresh Fruit and Vegetable Program (FFVP); Special Milk Program; Seamless Summer Option (SSO); and Summer Food Service Program (SFSP).

### Small Purchase Procedures

Small purchase procedures, also known as informal procurement, are those relatively simple and informal procurement methods for securing services, supplies, or property that may be used when the anticipated acquisition will fall below the small purchase threshold. The small purchase threshold has been changed from \$100,000 to \$150,000. State and local regulations often set lower small purchase thresholds which are more restrictive than the federal level. In applying the small purchase threshold, the School Food Authority must adhere to the most restrictive, lowest limit set. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

### Sole Source Procurement

Sole source procurements in the school nutrition program (SNP) occur only when the goods or services are available from only one manufacturer and/or through only one distributor or supplier. Sole source describes a condition of the procurement environment. In a true sole source situation, conducting a traditional solicitation (sealed bid, competitive proposal, or small purchase) is a meaningless act because the element of competition will not exist. When faced with an actual sole source situation, a School Food Authority must first obtain state agency approval, and then go directly to the one source of supply to negotiate terms, conditions, and prices.

## Solicitations

A solicitation is a document used by the School Food Authority to acquire goods, products, and/or services. Solicitations must incorporate a clear and accurate description of the technical requirements for the material, product, and/or service to be procured. Solicitations must also identify all the requirements which the respondents (offerors) must fulfill and all other factors to be used in evaluating the solicitations or proposals.

## Solicitation Protest Procedures

An interested party may protest a solicitation or other request for offers for a contract for the procurement of property or services; the cancellation of such a solicitation or other request; an award or proposed award of such a contract; and a termination of such a contract, if the protest alleges that the termination was based on improprieties in the award of the contract. Grantees and subgrantees must have protest procedures in place to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency.

Food and Nutrition Service (FNS) will accept a solicitation protest from a protestor only if the following conditions have been met.

- The contract was made in connection with the School Nutrition Program (SNP).
- The protestor has exhausted all administrative remedies with the grantee and subgrantee before pursuing the protest with FNS.
- Violations of federal law or regulations and the standards of this section exist (violations of state or local law will be under the jurisdiction of state or local authorities).
- Violation of a grantee's or subgrantee's protest procedures exists for failure to review a complaint or protest. Protests received by the federal agency other than those specified above will be referred to the grantee or subgrantee.

## Solicitation Template

A solicitation template, sometimes referred to as a boiler plate, contains standard language included in the solicitation documents. The template should be reviewed by legal counsel for compliance to federal, state, and local requirements.

## Specification

A specification is a concise statement of a set of requirements to be satisfied by a product, material, and/or process.

## Specification Sheets

Specification sheets are written materials prepared by manufacturers to describe their equipment and document important product information.

## Standardized Recipe

A standardized recipe is a recipe that has been tried, adapted, and retried several times for use by a given school nutrition operation. The recipe has been found to produce the same good results and yield every time when the exact procedures are used with the same type of equipment and the same quantity and quality of ingredients.

## Standards of Identity (SOIs)

Standards of Identity (SOIs) for foods are federal requirements that define what a food product is, its name, and the ingredients that must or may be used in the manufacture of that food. SOIs protect consumers by ensuring labels accurately describe the products contained within the package.

## State Agency (SA)

The State Agency (SA) is the agency in the state responsible for administering the Child Nutrition Programs.

## Stock Keeping Units (SKUs)

A stock keeping unit is a unique identifier for each unit of product. The SKU is usually the product code number.

## Transparent

Transparent means that everything done by the SFA must be clear, forthright, and out in the open.

## Transportation

Transportation is the process of moving food and non-food products from one site to another.

## United States Department of Agriculture (USDA)

The USDA is the federal department responsible for administration of the nation's child nutrition and USDA Foods distribution programs. The Food Distribution Division of USDA's Food and Nutrition Service (FNS) is responsible for coordinating the distribution of USDA Foods to state agencies that oversee the SNP in their states. The FNS administers the nutrition assistance programs of the USDA. The mission of FNS is to provide children and needy families with better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts.

## USDA Foods

USDA Foods are available to any school that participates in a USDA school nutrition program. USDA foods account for 15 to 20 % of the foods in SNPs and are 100 % American grown.

## Velocity Report

A velocity report provides the quantity, the date of purchase, and other valuable information. The report can serve as a tool for the SFA staff when forecasting the needs of the district and documenting solicitation integrity. Upon request, the distributor can generate a velocity report for products purchased during a specific time period.

## Value-Analysis Process

A value-analysis process is a study of the total cost and total savings to the buyer on each purchase to determine if any specific cost is high for the value received.

### **7 CFR Parts 3015**

Included in USDA's regulations is the 7 CFR Parts 3015 (Uniform Federal Assistance Regulations) regarding the administration of grants. Subpart S sets forth the procurement provisions and Subpart T sets forth the cost principles. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=c3b7f45761b2f1f1364911953018f084&rgn=div5&view=text&node=7:15.1.7.2.3&idno=7>

### **7 CFR Parts 3016**

Governmentwide Debarment and Suspension-Nonprocurement USDA regulations, 7 CFR Parts 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) explain state and local legal requirements. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=d5ad57a741650586074b3c9f00fcd888&rgn=div5&view=text&node=7:15.1.7.2.4&idno=7>

### **7 CFR Parts 3017**

Government wide Debarment and Suspension-Nonprocurement USDA regulations, 7 CFR Parts 3017, explains limitations regarding debarment and suspension. [http://www.access.gpo.gov/nara/cfr/waisidx\\_01/7cfr3017\\_01.html](http://www.access.gpo.gov/nara/cfr/waisidx_01/7cfr3017_01.html)

### **7 CFR Parts 3018**

Governmentwide Debarment and Suspension-Nonprocurement USDA regulations include 7 CFR Parts 3018 (New Restrictions on Lobbying) which explains limitations regarding lobbying activities. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=3ab3b64358512315f9684af1843bc32c&rgn=div5&view=text&node=7:15.1.7.2.6&idno=7>





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