

WHAT IS PROCUREMENT?

“Procurement” means buying goods and services. Procurement rules ensure that program benefits are received by eligible schools and children, and that taxpayer dollars are used effectively and efficiently, with no waste or abuse. There are four fundamental concepts related to procuring goods and services for the Child Nutrition Programs using Federal funds: full and open competition, responsible and responsive vendors, the Buy American provision, and the role of state and local regulations.

Part 200 of Title 2 of the U.S. Code of Regulations titled, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, lays out the basic procurement requirements that School Food Authorities (SFAs) and sponsors administering the Child and Adult Care Food Program and the Summer Food Service Program must comply with for the procurement of food, and other goods and services, when using federal funds. Program-specific rules can be found in the federal regulations governing each federal nutrition program. In accordance with the regulations, schools must assess whether any expenditure being paid for from the non-profit food service account is allowable, meaning is it necessary, reasonable and allocable. SFAs must ensure that the expense supports or improves the child nutrition programs.

Farm to school and school garden expenses may be allowable costs to be incurred by the nonprofit school food service account, however the expenditures must support or improve the Child Nutrition Programs.

State and local procurement policies at each level of government, from school boards to the U.S. Congress, can make regulations and policies about the use of school meal funds, the procurement process and contracting requirements, and the goals and practices for using locally grown foods. These laws and policies provide the framework by which all school districts procure food. State and local rules may be more restrictive than federal policies, or may provide specific support (including funding) for local sourcing. For example, some districts require that schools only purchase from Good Agricultural Practices (GAP) certified farms; others may require vendors hold a certain amount of liability or worker’s compensation insurance. Schools must follow all applicable federal, state and local procurement rules.

FULL AND OPEN COMPETITION

The most important principle of a sound procurement is competition. The regulations use the term “full and open competition,” which essentially means all potential suppliers are on a level playing field. Competition is essential in ensuring schools are able to purchase high quality goods and services at the lowest possible price. In a competitive environment, sellers may accept a smaller margin of return on a given sale rather than make no sale at all. Schools may receive more goods or services at a lower price than in a non-competitive environment. Additionally in a competitive environment, businesses seek to differentiate themselves in terms of quality and innovation.

In order to ensure full and open competition, schools cannot place unreasonable requirements on firms in order for them to qualify to do business such as of the following examples:

- Require unnecessary experience or excessive bonding (e.g., a school cannot require that vendors have at least 50 years' experience serving schools)
- Award *contracts* to or order from one vendor without competition
- Have organizational conflicts of interest (e.g., a school cannot award a contract to a school board member, employee or family member, etc.)
- Specify only a brand name product instead of allowing an equal product to be offered
- Make any arbitrary decisions in the procurement process (e.g., a school cannot grant a contract because it liked one company's branding)
- Write bid specifications that are too narrow and limit competition
- Allow potential contractors to write or otherwise influence bid specifications
- Provide insufficient time for vendors to submit bids
- Use local as a product specification
- Schools must do everything possible to avoid restricting competition. The goal is to have as many suppliers as possible (with a recommended minimum of three) respond to every solicitation

The following are examples of reasonable terms and conditions that a school might include in a bid solicitation:

- Respondents must meet the minimum requirements for liability insurance and worker's compensation coverage as stated in this document
- Respondents shall provide documentation with sufficient evidence of at least five years' experience
- District reserves the right to require a performance bond upon award
- Responses are due within four weeks from notification e.g., public notification such as newspaper ad or direct notification such as phone call, in person, or email

GEOGRAPHIC PREFERENCE OPTION

The geographic preference rule confers the authority to define local directly to school food authorities (SFAs). Many state and local governments have adopted definitions of local such as “within the State” or “within the county.”

With the current regulations and guidance, using local as a product specification is seen as limiting competition. Many have misinterpreted the geographic preference rule as allowing schools to use local as a specification, however the language included in the Final Rule, Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, indicates that local cannot be used as a specification. The preamble of the Final Rule states, “A geographic preference is not a procurement set-aside for vendors located in the specified geographic area, guaranteeing them a certain level or percentage of business. In addition, including a geographic preference in a solicitation document does not preclude a vendor from outside the specified geographic area from competing for, and possibly being awarded, the contract subject to the geographic preference.”

Unprocessed Foods Geographic preference applies only to unprocessed locally grown or raised agricultural products. 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 and thus are allowable:

- Refrigerating
- Freezing
- Size adjustment made by
- Peeling
- Slicing
- Dicing
- Cutting
- Chopping
- Shucking
- Grinding
- Forming ground products into patties without any additives or fillers
- Drying or dehydration
- Washing
- Packaging (such as placing eggs in cartons)
- Vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package)
- Adding of ascorbic acid or other preservatives to prevent oxidation
- Butchering livestock and poultry
- Cleaning fish
- Pasteurizing milk

RESPONSIVE AND RESPONSIBLE VENDORS

In order to win a contract, vendors must be considered both responsive and responsible. In order to be considered “responsive,” vendors must conform to all of the school’s stated terms and conditions. For example, if a school issues a solicitation for apples and the vendor responds with a bid for peaches, the vendor is not responsive. Likewise, if a school specifies that it needs delivery to five sites and the vendor can only service two of the five sites, the vendor is not responsive. Respondents that require a minimum ship quantity or dollar value that is not defined in the solicitation document may be deemed nonresponsive. Respondents requiring prepayment may also be considered nonresponsive. To be considered “responsible,” vendors must be capable of performing successfully under the terms and conditions of the contract. For example, if a school requires that responders provide evidence of past success meeting delivery times and upon calling the responder’s references learns that the vendor has a poor track record regarding on-time deliveries, the vendor would not be considered responsible. Similarly, schools can use reputation as a factor when evaluating responsible vendors. The school may call other schools that have used the vendor to verify reputation.

Small-Purchase Threshold

The current federal small-purchase threshold is \$150,000. This means that schools must use the formal procedures to procure anything that costs more than \$150,000 or more. Any more lenient (e.g., higher) small-purchase thresholds set at the state or local level do not apply to the expenditure of federal funds. States or localities may set lower small-purchase thresholds, and many do. If a state or local threshold is more restrictive, it always trumps the federal threshold. Small purchase thresholds vary widely across states and localities. For example, Delaware's threshold is \$20,000, while California adjusts its threshold every year; in 2015, California's threshold was \$86,000. Local governments and school districts may set even more restrictive thresholds. If a school district's small-purchase threshold is \$10,000, then purchases greater than this amount must be procured using formal methods while all purchases under \$10,000 may be made using the informal purchasing method. When preparing a solicitation, a school must first consider the terms of the procurement and the estimated value of the purchase; this will determine whether the procurement should be solicited informally or formally or if the purchase falls below the micro-purchase threshold set at \$3,000.

Micro-Purchases

The Federal Office of Management and Budget issued new streamlined guidance in 2013 called Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. These revised requirements went into effect on December 26, 2014. These new regulations create a new allowable procurement method called the micro-purchase for purchases where the aggregate value is under \$3,000. Micro-purchases enable schools to purchase supplies or services without soliciting competitive quotes, if the school considers the price reasonable. When using the micro-purchase option, schools must distribute micro-purchases equitably among qualified suppliers; develop written specifications and required terms, conditions, and contract provisions; and, document all purchases. Schools should use the same process to determine whether a micro-purchase falls under the micro-purchase threshold as they would have to determine if a purchase falls under the small-purchase threshold, meaning purchases should not be split arbitrarily. For example, if a district needs to make a one-time purchase of a product and the purchase is valued under \$3,000, it may purchase the product without soliciting quotes. However, if the district needs to purchase \$3,000 worth of lettuce several times throughout the school year, the school should plan its needs over a period of time and use a competitive procurement method because the aggregate value of the purchase lies above the micro-purchase threshold. The micro-purchase process allows districts to react quickly to changing markets and urgent needs when making small purchases. It will also prove useful to smaller districts where a number of the purchases fall under \$3,000. Before contacting a supplier to make a purchase, districts should do market research to understand what a reasonable price for the product is. Micro-purchases may also prove especially useful when purchasing local products. Perhaps a district is committed to purchasing a variety of products seasonally and has built flexibility into its menu to enable the district to purchase small quantities of produce when local farmers might have a surplus.

Informal Procurement Process

Schools/Districts may use the informal procurement process when the estimated amount of the purchase falls below the applicable small-purchase threshold (the lowest of the federal, state and local thresholds). Regulations prohibit breaking up solicitations into smaller pieces to avoid the formal procurement process unless specific circumstances exist to justify splitting the purchase. If the value of procurement falls below the applicable threshold, schools may choose whether to use the informal or the formal procurement method. Even though the informal procurement method is less rigorous, it is important to note that competition is still required, and the regulations must be followed. Schools must develop and provide written specifications to the vendor(s), and acquire bids from at least three vendors. Although bids might be received over the phone or face-to-face at a market, schools should document all bids. The award is made to the responsive and responsible bidder with the lowest price.

Develop specifications and terms and conditions

- Detail the requirements of the intended agreement, including delivery and packing conditions.
- Identify sources: Contact potential vendors in a variety of ways (e.g., visiting a farmer's market, calling on the phone, or emailing) and gather three bids.
- Evaluate responses: Ensure that responders are responsible and responsive—in accordance with all aspects of the specifications. Document each bid even if it was offered in a face-to-face meeting.
- Award the contract: Determine which bidder offers the best value and award the contract to the bidder that is most responsive and responsible with the lowest price.
- Manage the contract: Ensure the school receives everything from the vendor that the contract stipulates. Writing specifications is a vital step as the specifications outline all the school's requirements for the product, its delivery, the providers, and more.

Specifications

Also, keep in mind that products cannot be purchased until the school knows the exact specifications that it needs. Schools should not include unnecessary requirements that may increase the price and/or decrease the number of local producers that can meet the conditions laid out in a solicitation. For example, if an item does not need to be refrigerated, then it is unnecessary to include "refrigeration after harvest" as a specification, since maintaining a specific temperature may require a refrigerated truck, or refrigerated storage, and not all vendors may have this capability. The second step of the procurement process is where informal and formal processes differ most. Formal procurement requires schools to publicly post a solicitation, while the informal method allows schools to solicit bids directly from vendors without advertising a solicitation. Although it is not necessary to publish a written solicitation when using the informal procurement method, it is important to keep documentation on hand to ensure that each vendor contacted receives identical information. Sometimes, schools are

unable to find three sources that meet their specifications. In such cases, the school must document why it was unable to find three quotes and make note of any efforts taken to broaden the specifications in order to get more bidders. For example, a school district seeks to purchase grape tomatoes from local farmers. It develops written specifications that include quality, quantity, packaging, and delivery requirements. The specifications are then faxed, mailed, or emailed to several farmers before the purchase date. The school district receives informal quotes from only two farmers, and therefore must document its efforts to ensure full and open competition. The district should consider if their requirements were overly restrictive or if there are other producers from which it can request quotes. After this evaluation, if the district has done its due diligence and is confident full and open competition was maintained, the district should record its attempts to obtain three quotes and may award the grape tomato contract to one of the two respondents.

APPROACHING ONLY LOCAL SOURCES

The informal procurement method differs from the formal method in that solicitations do not need to be publicly advertised, allowing the school to more tightly manage who is invited to respond. If a school is making a purchase that falls under its applicable small-purchase threshold, it can choose three (or more) local producers and request quotes without issuing a formal process. This can be done by calling local producers, going to the farmer's market and talking to potential vendors, or posting specifications on a local email list or on a flier in a place where producers will see it. This method represents another potential way to procure local products without using geographic preference.

EXAMPLE: FOR SPECIFICATIONS FOR TOMATOES

A school nutrition director calls several tomato growers in the state and emails the request to a list of producers that he/she has developed, rather than posting it publicly. The district always documents each bid received. Here are specifications for tomatoes:

- Available at least ten months out of the year
- Greenhouse-grown, hydroponically grown, or grown outside
- Grade No. 1 quality
- Fully ripe
- Red color stage
- Ten-day shelf life
- Pesticide free and organic

- GAP and Good Handling Practices certified, preferred
- Transported to a school warehouse or to eighteen individual schools
- Must be delivered two days before service
- Must be able to provide an estimated quantity of 36 cases per week

Since the value of the product School District needs falls below the small-purchase threshold of \$3,000, this district does not need to formally advertise the solicitation; the district simply calls and emails producers known to be able to supply the product and meet the district's definition of local.

The Formal Procurement Process

For any purchase above the applicable small-purchase threshold, schools must use the formal procurement process. There are five main steps to completing a formal procurement:

- **Develop a solicitation:** Determine what solicitation tool you will be using: competitive sealed bidding (invitation for bid) or a competitive proposal (request for proposals). Then draft solicitation language that reflects the types of products and providers you need. As with the informal process, detail requirements of the intended agreement, including delivery and packing conditions. Solicitations must also state the criteria against which the offers will be evaluated.
- **Publicly announce/advertise the solicitation:** Announce the solicitation in print, such as in the newspaper or online. As long as the information is made publicly available, you may also contact known bidders.
- **Evaluate the offers:** Evaluate responses using criteria outlined in the solicitation. Objectively document the evaluation of every offer; this documentation may be needed if you are ever required to demonstrate full and open competition was maintained.
- **Award the contract:** Award the contract to a responsive and responsible vendor who offers the best value.
- **Manage the contract:** Ensure that you receive everything the contract stipulates from the vendor. Within the formal procurement procedure, there are two types of procurements: competitive sealed bidding and competitive proposals.

TECHNICAL REQUIREMENTS

In the technical requirements section, schools will include criteria for how a vendor will be deemed to be responsive and responsible. Does the vendor have the management, track record and ability to provide the district what it needs? As noted previously, in order to win a contract, vendors must be considered both responsive and responsible. The technical requirements will include factors like delivery schedule and references. In order for a vendor to be considered responsive and responsible, the bidder must meet any product specifications and other requirements that are outlined in the solicitation, meaning if a bidder cannot meet one of the technical requirements or product specifications that bid should not be considered because it is not responsive to the solicitation. When determining if a vendor is responsive and responsible, it is an all or none evaluation. It is not evaluated on a scale. The vendor can meet the requirements or they cannot, there is not a middle ground. If a district is interested in evaluating services or products on a scale, it should consider using an RFP, which is covered later in this guide. Technical requirements will appear in every type of procurement, even in an informal procurement, and the district should document this information. It is important to remember that schools must always award to a vendor that is both responsive and responsible. This is true in any type of procurement whether it is formal or informal; the vendor must be able to meet the requirements that are outlined in the solicitation.

THE BUY AMERICAN PROVISION REQUIREMENTS

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the NSLA (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodity or product. Section 12(n) of the NSLA defines “domestic commodity or product” as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. “Substantial” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States. The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards SFAs must comply with when purchasing commercial food products served in the school meals programs.

Implementing the Buy American provision

The Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture. SFAs are reminded that when funds are used from the nonprofit food service account, procurement transactions for food products on the commercial market must comply with the Buy American provision, whether food products are purchased by SFAs or entities that are purchasing on their behalf.

Some examples of entities purchasing on the behalf of SFAs include: food service management companies, group purchasing organizations, or cooperatives of schools purchasing shared goods and services, or through an inter-entity agreement, etc. If SFAs have difficulty ensuring that food products meet this regulation, FNS encourages a specification to be included in solicitations and contracts that only 100% domestically grown and processed products are approved for purchase. The Buy American provision supports local and small businesses. Using food products from local sources supports small local farmers and provides healthy choices for children in the school meal programs. Purchasing from these entities also supports the local economy. Compliance with the Buy American provision may also encourage SFAs to work with local, or small, minority, and women-owned businesses. Federal regulations require SFAs to take all necessary affirmative steps, when possible, to assure that small, minority, and women-owned business enterprises are used (2 CFR Part 200.321). These entities may also be good sources for products of the United States, or its territories. FNS encourages purchasing food products from local and regional sources when expanding farm to school efforts as well. There are limited exceptions to the Buy American provision which allow for the purchase of products not meeting the “domestic” standard as described above (“non-domestic”) in circumstances when use of domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food products should be considered. For example, SFAs should ask:

- Are there other domestic sources for this product?
- Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive (e.g. substitute domestic pears for non-domestic apples)?
- Am I soliciting bids for this product at the best time of year?
- If I contracted earlier or later in the season, would prices and/or availability change?

Again, although exceptions to the Buy American provision exist, they are to be used as a last resort. These exceptions, as originally outlined in the 2012 guidance, are:

- The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.
- If a SFA is using one of the above exceptions, there is no requirement to request a waiver in order to purchase a non-domestic product. SFAs must, however, keep documentation justifying the exception(s).

Monitoring the Buy American provision by SFAs

The USDA requires that a school food authority purchase, to the maximum extent practicable, domestic commodities or products. This is accomplished by SFAs including the Buy American provision in solicitations, contracts, and product specifications. A reply offer to comply with Buy American terms in a solicitation ensures contractors are aware of Buy American requirements. Further, bidder assurance of the Buy American provision ensures that the bidder is responsive and responsible to the solicitation. Best practices would then entail including language in the solicitation and contract on how the bidder would address alternative methods to conform to the Buy American provision, if needed. Furthermore, as noted above, language should be included that establishes the method of requesting exceptions before supplying non-domestic products. Additionally, solicitation and contract language must be monitored to ensure compliance. SFAs must monitor contractor performance as required in 2 CFR Part 200.318(b), formerly in 7 CFR Part 3016.36(b)(2), to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. This is accomplished by ensuring the product label designates the United States, or its territories, as the country of origin. Therefore, SFAs must ensure that products delivered comply with any Buy American contract provisions by reviewing products and/or delivery invoices/receipts to identify the country of origin is the United States or its territories. SFAs also need to conduct a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses to ensure products comply with the Buy American provision, unless a limited exception has been approved. State agencies conducting procurement reviews in conjunction with or as a separate review from administrative reviews in 7 CFR Part 210.18, must ensure SFA compliance with the Buy American provision. Similar to SFA monitoring, State agencies must determine if a SFA's solicitation and contract documents contain the language for contractors to supply products in compliance with the Buy American provision; review the label on a variety of food products in storage facilities; and review a sample of supplier Regional and State Directors invoices/receipts to ensure the country of origin is the United States or its territories. If exceptions are identified, the State agency must request documentation justifying the exception(s) outlined above. If non-domestic products are identified and there is no documentation justifying the exception, the State agency must issue a finding and require corrective action. State agencies are reminded to distribute this memorandum to SFAs immediately. SFAs should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

USING DISTRIBUTORS

Distributors are an integral part of school food service operations. Many schools rely on distributors to deliver the majority of their food since distributors provide a one-stop shop, deliver directly, and hold liability insurance. Schools that want to build local procurement into their contracts with distributors should develop a solicitation that indicates which products they would like to receive from local sources, the quantities desired, and whether local products are preferred at all times, only in certain months, or as available. Schools also need to include a clear definition of “local.” In the solicitation, schools may request that distributors provide both local and non-local varieties of a product, to ensure local products are provided when available and that a non-local product is on hand when a local variety is not in season. Once a distributor has been competitively procured, a school may select any product from the contracted list. Often, distributors already offer local products even when local is not specified in the contract, and all a school needs to do is order the product. Additionally, once the contract is established, the school can suggest specific producers for the distributor to consider working with to procure locally.

By using a Co-op or Food Hub, some farmers work together to share in the distribution, marketing, processing, selling, or billing of their products and create cooperatives or food hubs, which are a type of distributor. Food hubs range in size and the services they provide, but frequently offer a viable distribution network to supply local food to schools. A cooperative or food hub may allow producers to aggregate their harvests of one type of product to meet the large demand of a school. Working with a co-op also allows schools to work with one entity to supply multiple items instead of working with several individual farmers. Schools should ensure that aggregation operations hold the amount of liability insurance required by the district.

USING A FORWARD CONTRACT

Forward contracts, also known as contract growing, allow schools to solicit for a product before it is harvested. Forward contracting allows producers to plan for large demand and plant and pack according to school districts’ needs and potentially provides schools with a more reliable supply. Although contract growing offers a guaranteed market for a farmer’s crop, this method does pose some risk to schools. To mitigate this risk, schools generally incorporate contingency plan language into the contract. Schools can require product substitutions in the case of crop failure or reserve the right to source product elsewhere. A forward contract could be put in place through an informal or formal procurement directly with a grower or between a distributor and producer. Distributors are well-versed in forward contracting and are accustomed to finding ways to guarantee supply before a product is available.

District may use the Department of Defense Fresh Fruit and Vegetable Program (DOD Fresh) Participating States and schools can elect to spend a portion of their USDA Foods entitlement money on fresh fruits and vegetables through DOD Fresh. To supply fresh fruits and vegetables, DOD contracts with over 45 produce vendors across the country. Although these vendors are not required to purchase local produce, they are strongly encouraged to do so. Each DOD Fresh produce vendor updates the online FFAVORS catalog for its region of service on a weekly basis and marks locally procured products. “Local” in DOD Fresh signifies that the product is from within the State, the contract award zone, or a

State adjacent to the contract award zone. If a school would like to purchase additional local products through DOD Fresh, it should work with the DOD produce vendor to request additional local options, and/or to suggest specific producers or producer groups that the vendor might work with to secure locally grown produce.

INVITATION FOR BID

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 (also called an 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. In addition, the IFB should describe the minimum standards expected of a responsible vendor/bidder in measurable terms.

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.

Full and Open Competition

Full 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.

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 non-profit school nutrition account to the vendor net of all discounts, rebates and other applicable credits accruing to or received by the vendor.

Cooperative Purchasing Cooperative

A Cooperative Purchasing Cooperative occurs when a group of schools join together to accomplish all or part of the steps in the purchasing task. Cooperative purchasing allows schools to leverage buying power and, potentially, to reduce costs and increase the quality of products and services available to members.

Request for Proposal

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 contract is awarded. Competitive proposals may be used if conditions are not appropriate for the use of competitive sealed bids. School Food Authority 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.

Sole-Source Procurement

A Sole-Source procurements in the school nutrition program 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.

EXAMPLE OF SOUH CAROLINA PURCHASING LIMITS:

Procurement less than \$50,000.00 are made under this procurement procedure. Large procurements cannot be artificially divided to give the appearance of a small purchase. The solicitation requirements for dollar thresholds are as follows:

- 1 - Purchase not in excess of \$2,500.00 - No competition is required if prices are considered fair and reasonable.
- 2 - Purchases from \$2,500.01 to \$10,000.00 - Solicitations of three written quotations from qualified sources of supply.
- 3 - Purchase from \$10,000.01 to \$50,000.00 - Written solicitations for written quotes, bids, or proposal are allowed. Each procurement must be advertised at least once in South Carolina Business Opportunities (SCBO) for no less than 7 days. A Request for Quotation form is a helpful tool for agencies.

Remember, these thresholds apply to the total potential commitment including fixed or optional extensions. The protest provisions of Section 11-35-4210 do not apply to procurements less than \$50,000.00

EXAMPLE OF A PURCHASING AGREEMENT:

This agreement made on [Date] between [School District] and [Producer] to be effective on [Date].

Purchases Desired:

[School District] requests the purchase of variety produce for the school year of: .
Extensions may be available for the and school years, to be mutually agreed upon in the month of January prior to the new school year.

Delivery Requirements:

[School District] reserve the right to refuse deliveries of produce if:

- Cooled produce registers above 41 degrees. An infrared scan of temperature will be made at time of delivery.
- Produce is encrusted with field dirt and/or plant material.
- Insects or rodents are found within packaging.
- Produce is not contained in clean/safe packaging at time of delivery.
- Packaging is torn, dirty or suspect to tampering.

(All requirements are per District HACCP regulations)

Deliveries are to be made to:

[School Name]

[Address]

[Address, continued]

Attention: [contact person name and information]

Deliveries are to be made to listed official only. Estimated delivery dates/times should be prearranged with [insert arrangement information]. A detailed invoice including total weight and quantity and price per pound or piece must accompany all deliveries and bear the signature of the school delivery official.

All delivery vehicles must be clean and in good condition. If trucks are refrigerated, temperature must register at 41 degrees or below. Vehicles must be free of farm debris. [Insert any other details required by your school or school district]

Ordering Process/ Pick up Procedure/ Custom Boxes:

- Seller shall contact purchaser via email at [Email address] or via telephone at [Telephone number] with items, quantities available, and pricing on [Agreed upon day of week] during the school year beginning on [Date] for the school year.
- Purchaser shall order items and quantities desired at agreed upon locations. Should purchaser opt to pick-up products from the seller, both shall agree upon time and process.

Payments:

Payments of products received to be made by [School District] utilizing a standard 30-day pay cycle. Payments will be made in the form of a check and mailed to:

[Vendor or farm name]

[Address]

[Address]

All purchases are intended for use of the National School Lunch Program and all programs operating therein.

Signed:

Farmer Name

School Contact and Title

Sources:

Procurement Resources ,Federal Procurement Regulations, Menu Planning Resources ,10 Facts About Local Food in School Cafeterias Writing Clear Thorough Specifications ,USDA Foods: A Resource for Buying Local, San Diego Unified School District Informal Produce Solicitation, Sample Forward Contracts, Using DoD Fresh to Purchase Local Produce Geographic Preference: What It Is and How to Use It,Using Geographic Preference in Four Steps , Oakland Unified School District’s RFP for Fresh Produce, School Food FOCUS RFI to Supply Locally Grown Fresh and Frozen Fruits and Vegetables, USDA Government Policy Memos, Procurement Geographic Preference Q &As Part I, Procurement Geographic Preference Q & A Part II, USDA State Agency Guidance of Procurement from FNS, Procuring Local Foods for Child Nutrition Programs Guide, Child Nutrition Title 7 of the Code of Federal Regulations, Final Rule: Geographic Preference Option, FNS-Farm to School Website, South Carolina Procurement Code

Author Biography

Director, Student Nutrition at District Five of Lexington and Richland Counties.

Former State Director, for School Food Services and Nutrition at the South Carolina Department of Education: Responsible for administering and monitoring federal and state regulations and the disbursement of over \$273 million dollars in federal and state funds for the National School Lunch and Breakfast Programs, Fresh Fruit and Vegetable Grant, USDA Foods, State School Nurse Consultants. Former Director for School Food Services in Charleston County School District. SC Board Member of the SC Food Policy Council, State Advisor to the SNA of SC, Past Public Policy and Legislative Chair for SNA of SC, Southeast Farm to School Steering Committee, Past Member of the Industry Advisory Board for SNA, SC Farm to School Planning Implementation Team and Past President of School Nutrition Association of SC.

Married to Melinda, and have three swell children Clint, Erin and Caroline.

Hobbies include: a gentleman farmer, fishing, hunting, golfing and spending time with family. Member and Former Sunday school Teacher at St. Peters Lutheran Church.