



DATE: April 23, 2010

TO: Superintendents
School Food Authority
School Food Service Directors/Managers
Business Managers

FROM: Jim Addy, Administrator, Division of School Support and Information
Julia Thorius, Chief, Bureau of Nutrition, Health and Transportation Services
Patti Harding, Administrative Consultant School Programs

RE: Follow up to March 2 Memo on Procurement of Items for the National School Lunch, School Breakfast and related Programs.

PLEASE ROUTE AS NEEDED

The following additional guidance is provided related to questions that have been asked in regards to the March memo issued by the Department on procurement and the desire to be sure everyone has the same information. The State Agency cannot specifically detail what each School Food Authority (SFA) needs to do to be in compliance with the USDA Federal Regulations for procurement as actions needed are dependent on the local procurement policy and current practices in place. Local policy may be more restrictive, but as a minimum, must meet USDA requirements. This memo and the previously issued memo are provided as guidance to assist the local SFA with sorting through what if any changes need to be made in current procurement practices.

Background

USDA Federal Regulations require that all procurement (purchasing of food or non-food products or services) be done in a manner that ensures open and free competition. Whether the procurement is done formally or informally, securing and documenting the results of the competitive process are requirements. If for some reason it is not possible to secure competitive pricing, those attempts must be documented as part of a sole source competitive process. All expenditures using the non-profit school food service fund are subject to these requirements.

Further, *public organizations must follow the most restrictive of local, state, or federal law/rules.* The current USDA regulations require that to purchase items costing more than \$100,000 in the aggregate (or total) a formal purchasing method must be used. Most public school districts have a local procurement policy with a much lower threshold, that policy would then apply and govern the procurement method to be used, formal versus informal.

(State rules relative to the School Breakfast and Lunch Program read as follow: 281-58.8(283A) Procurement. A school board, the authorities in charge of a nonpublic school and each other eligible provider participating in the program shall adopt a policy on the procurement of goods and services used in the administration of the program. If an issue is not covered in the policy, the school district, the authorities in charge of the nonpublic school and each other eligible provider shall follow the appropriate federal regulation.)

USDA regulations allow private non-profit organizations to follow federal rules, even when the federal rules are less restrictive than the organization's own rules.

Possible Action Steps Needed by July 1, 2010

SFAs should review the following for which description most closely describes the SFAs current practices and then take the appropriate action steps. As stated previously, this memo is not intended to be specific to each SFA or include all needed action steps, but is provided to help guide the SFA in its thinking.

Situation 1

If the SFA is currently doing all procurement or purchasing of goods and services as an independent SFA, utilizing either formal or informal procurement consistent with local policy, federal and state law and USDA regulations and guidance in a manner that provides for free and open competition, the SFA should not need to make any substantive changes. However, it is advised that the SFA review the March 2 memo and the referenced regulations/documents in both memos to determine if there are areas where the SFA's processes should be fine tuned.

Situation 2

If the SFA belongs to a cooperative and is currently purchasing any products through a cooperative, the SFA may or may not need to make changes in current procurement practices. Similar guidance applies to SFAs thinking about joining or forming a new cooperative.

To help in assessing what steps may be needed for procuring products through the cooperative, review the following:

1. Was the SFA consulted on its product preferences prior to the cooperative conducting any procurement for the school year?
2. Did the cooperative use fair and open competition following formal or informal procurement as applicable in obtaining prices and selecting a vendor for the products or service? Did the cooperative also follow all pertinent Federal contract and cost requirements? (If the SFA is a member of a cooperative, best practices would be for the SFA to have on file a copy of the original bid document to help document compliance with USDA procurement requirements.)

If the answer to both is yes, proceed to number 3 below.

If the answer is no or you are not certain (even after gathering additional information), procurement using the School Food Service Fund is not allowed, fair and open competitive procurement must be conducted, so a new procurement process needs to begin to be sure that expenditures are allowable.

3. If the SFA is considering buying through a cooperative, has the SFA done price comparisons to determine if buying the specific items listed on the bid document issued by the cooperative does result in lower prices than the SFA could obtain independently? (If the SFA is a member of a cooperative, best practices would be for the SFA to have on file a copy of the entire original bid pricing, in addition to the comparison pricing documentation required to justify procurement through the cooperative.)

If the answer is yes, proceed to number 4 below.

If the answer is no, procurement is not allowed, until the comparison is completed, justifies the decision and documented. In ideal circumstances, when first joining a cooperative a price comparison would be done for all products to be purchased from the cooperative, and for a representative sampling of products periodically thereafter. Refer to the March 2 memo for additional guidance relative to SFA responsibilities as a member of a cooperative.

4. Does the SFA want to purchase any product or service that was not included in the original bid document? (It makes no difference if the bid was issued by a cooperative or the SFA.) If yes, for these products for which specifications were not included as part of a previous still valid bid, the SFA must do additional fair and open competition using formal or informal procurement as applicable to obtain pricing for these items. (If the SFA is a member of a cooperative, best practices would be for the SFA to have on file a copy of any agreement(s) signed by the cooperative with a distributor, vendor, etc. that shows prices bid by item, fixed fee mark up on product(s), basis for price adjustments, and other terms such as minimum delivery requirements, delivery costs, payment terms, etc.)

Remember: the SFA cannot just choose to buy other products from a vendor that previously received a bid award. Competitive pricing, using fair and open competition needs to be secured for each product to be purchased, whether that is a product purchased through a cooperative or independently by the SFA.

If the answer to 1, 2, and 3 above is yes, and the SFA is obtaining other competitive pricing with fair and open competition for any item not specifically listed on a previous still valid bid, probably minimal changes are needed, however, it is advised that you review the March 2 memo and the referenced regulations and documents in both memos to determine if there are areas where the SFA's processes should be fine tuned.

Additionally, for those districts that are **members of a cooperative**, the degree of change needed in current practices of the member SFAs will be driven by what changes the members of the cooperative choose to make between now and July 1, 2010. The final responsibility as to whether or not fair and open, appropriate competitive procurement has been done, and conformance with all pertinent Federal contract and cost requirements, so as to allow expenditure of the individual SFA's non-profit school food service fund rests with the individual SFA, not the cooperative.

Overview of General Procurement Process

The following section provides an overview of the general steps a SFA might go through in the procurement process when making purchases as an independent district and/or in procuring products as a part of a cooperative. This is not considered to be a model, or to represent all of the steps in the procurement process or all of the options available to a SFA, but hopefully is a helpful overview of the processes.

Procurement of food and other items for use in the Child Nutrition Program must be done in compliance with federal regulations, state and local law, regulation, and policy. The official source for information on Federal rules for procurement, contracts, and costs is the State Agency and appropriate Federal sources (see reference section of memo).

Basic Steps in the Purchasing or Procurement Process

1. Plan menus.
2. The SFA determines or forecasts the quantity of food, equipment, supplies, etc. needed to produce these items for a specified period of time and develop specifications for these products. This is based on such things as desired packaging, portion sizes, nutritional content, product form desired, planned method of preparation, the frequency of menu planned offerings, and storage capability.
3. Products are then grouped based on potential bidders, i.e. the milk vendor probably will not bid on ovens, although some full line distributors will bid on a wide range of products.
4. Based on these potential groupings, prior purchases, estimated costs to purchase, etc. and other factors unique to the district a procurement plan is developed.
5. Additional purchase related requirements are then developed including instructions for providing the service or product, length of time prices are to be held, process of adjusting prices if to be allowed, criteria for awarding the bid, frequency of delivery, etc. Be sure the documents contain all of the required USDA and local district required provisions, such as the "Buy American" provision in 7 CFR 210.21(d), and, if applicable, how rebates and discounts will be handled, as per 7 CFR 210.21(f).
6. Issue formal or informal bids based on SFA/USDA formal procurement threshold, making appropriate public announcements to maximize fair and open competition, formal bids are typically sent to known potential bidders as well as any potential vendors responding to the public advertisement.
7. Conduct formal bid opening if appropriate.
8. Evaluate bids/pricing following criteria detailed in the bid documents.
9. Submit recommendations for award to the school board for award of contract.
10. Document the purchasing process; retain records per federal, state and local requirements.
11. Place orders.
12. Receive product checking to be sure product meets specifications.
13. Store products properly, rotating inventory.
14. Prepare meals and serve students.

In procuring or buying as an independent SFA, the process outlined above is followed for all procurement. All products or services purchased using the non-profit school food service fund is purchased following either the formal or the informal procurement rules.

In procuring or buying as a member of a cooperative, essentially the same rules are followed – the difference is you are doing parts of this as a group. Typically from the time the product specifications are developed until the time specific orders are placed, this is done in conjunction with the other members of the cooperative. Certain members of the cooperative may take more of a lead in the process or the members may even decide to hire a staff member to assist with these services. In either case, the members are still responsible for deciding on product specifications, being sure the bid documents are in compliance with federal, state, and local law and policy, etc. Typically because these specifications are developed jointly, not all products/services the SFA needs will be included as part of the bid issued by the cooperative. Any products or services that are not part of that bid must be procured separately, either by another bid by the members of the cooperative or independently by the SFA. Cooperatives may choose to issue a bid for a limited number of products, such as just entrée items, or just canned and frozen fruits and vegetables. A cooperative may choose to issue a bid for a wide range of products sometimes referred to as a “Market Basket” and might include such things as canned fruits and vegetables, meats, general grocery staples, cereal, non-food supplies, frozen entrees. Typically when an SFA or a cooperative issues a bid with a wide range of products only full line distributors are able to meet the needs outlined in the bid.

Resources/References

The following website takes you to the posting of USDA law, regulations and policy relative to the National School Lunch Program:

<http://www.fns.usda.gov/fns/regulations.htm>

The National Food Service Management Institute was authorized by Congress in 1989 and permanently authorized in 1994. The mission of the National Food Service Management Institute (NFSMI) is to provide information and services that promote the continuous improvement of child nutrition programs. NFSMI at <http://www.nfsmi.org/> offers print materials, available for free downloading, webinars, online courses, as well as workshops and other types of technical assistance.

One resource related specifically to procurement is titled First Choice: A Purchasing Systems Manual for School Food Service. It can be downloaded by chapter at the following address: <http://www.nfsmi.org/DocumentSearch.aspx?q=First%20Choice> **Caution:** some aspects of this manual are in need of updating, such as the section on geographic preference for selected local procurement as part of the farm to school initiative, so always refer to the regulations and the most current policy memos/guidance as issued by USDA and/or the State Agency.

Please note: A First Choice Procurement Training will be offered again this summer as part of the School Food Service Short Course offerings provided jointly with Iowa State University. (Note: for those that have attended one of the last two summers, this is a repeat.) The trainers are approved by NFSMI for instruction of this material. For

information on registering go to the DE website <http://www.iowa.gov/educate/> click on Nutrition Programs and in the box on the right titled Nutrition Latest News click on Summer NSLP Short Courses.

In Summary

For the SFA buying independently or through a cooperative, any product or service needed outside of the original products specified on the bid must be procured separately with the opportunity for maximum fair and open competition.

Compliance with USDA federal, state and local requirements for procurement must be followed for a purchase to be an allowable expenditure from the non-profit School Food Service Fund. It is the SFA's responsibility to be sure all procurement using the nonprofit school food service account is in compliance.

Questions should be directed to Patti Harding, Administrative Consultant School Programs, Patti.Harding@iowa.gov or Julia.Thorius@iowa.gov or your assigned Bureau Consultant.

cc: Iowa Educators Consortium