



LOCAL PROCUREMENT POLICY AND GUIDANCE

SP 18-2011 Q & A on Local Procurement **Geographic Preference**

Applying Geographic Preference

Q1: The 2008 Farm Bill amended the Richard B. Russell National School Lunch Act (NSLA) to direct the Secretary of Agriculture to encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. Does USDA define the geographic area that is considered to be local?

A: No, USDA does not define the geographic area that is considered to be local; the decision is left to the purchasing institution, such as a school food authority (SFA) making the purchase or the State agency (SA) making purchases on behalf of SFAs. In other words, the purchasing institutions, such as SAs, SFAs, child care institutions and Summer Food Service Program (SFSP) sponsors, may specifically identify the geographic area within which unprocessed locally raised and locally grown agricultural products will originate. The purchasing institution must not define local in a manner that unnecessarily restricts free and open competition.

Q2: Does the geographic preference option for the procurement of unprocessed agricultural products apply to all Federal Child Nutrition Programs?

A: Institutions receiving funds through the Federal Child Nutrition Programs may apply an optional geographic preference in procurement of unprocessed locally grown or locally raised agricultural products, including the National School Lunch Program (NSLP), School Breakfast Program (SBP), Fresh Fruit and Vegetable Program (FFVP), Special Milk Program (SMP), Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).

Q3: Can an SFA issue a solicitation that states, “We will only accept locally grown agricultural products from a State”?

A: No, the Federal laws allow institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring locally grown or locally raised agricultural products, as noted in the preamble of the geographic preference rule. The exclusion of all non-locally grown agricultural products is not a preference but rather a requirement of bidding and therefore is overly restrictive.

Q4: An SFA defined “local” as the entire State and issued a Request for Proposal (RFP). Can the SFA give a bidder geographic preference points if the bidder is incorporated outside of the State with its principal place of business outside of the State?

A: Yes, geographic preference in a procurement does not preclude a bidder from outside the specified geographic area from competing for, and possibly being awarded, the contract subject to geographic preference. The geographic preference applies to the unprocessed locally grown and locally raised agricultural product; it is irrelevant whether the bidder’s business is incorporated or has a principal place of business in the State.

Q5: An SFA wants to issue an Invitation for Bid (IFB). How does an SFA incorporate geographic preference points into an IFB?

A: An IFB doesn’t generally include preference points; instead, an SFA determines who is responsive based on the solicitation, and then from the responsive bidders the SFA awards the contract to the bidder with the lowest price. Therefore, it may not be feasible to incorporate “points” into an IFB in the same way as is done with an RFP. However, an SFA could write in the specifications that, for example, an apple must have been picked within one day of delivery or must have been harvested within a certain time period.

Additionally, the solicitation document must clearly outline how all bids will be evaluated, including the application of geographic preference in the scoring criteria. The following is an example of one approach on how to incorporate geographic preference points in an IFB:

Geographic preference points in an IFB would be applied after the SFA determined the three bidders with the lowest price. The three bidders with the lowest price would be given a total of ten geographic preference points if those bidders met the geographic preference. In order to determine the winning bidder, the scoring criteria would clearly state that one point would equal one cent; in other words, ten points would translate into ten cents. If one or more of the responsive bidders with the lowest price met the geographic preference, ten cents would be taken off of their respective prices and that bidder could potentially win the bid. Note: Deducting ten cents from the prices of responsive bidders that met the geographic preference only applies to determining the winning bidder and would not affect the actual price paid to a bidder.

In the following example, Bidder 2 meets the geographic preference and is given ten points which translates into deducting ten cents from Bidder 2’s price. In this example, Bidder 2 still doesn’t win the bid because Bidder 1 has a lower price.

	Bidder 1	Bidder 2	Bidder 3
Price	\$1.97	\$2.10	\$2.03
Meets geographic preference?	No	Yes (10 points)	No
Price with preference points	\$1.97	\$2.00	\$2.03

Q6: An SFA would like to prescribe geographic preference as a percentage in their solicitation (IFB or RFP). For example, the SFA would like to give a ten percent price preference to bidders offering unprocessed locally grown and locally raised agricultural products. Can an SFA prescribe geographic preference as a percentage in their solicitation?

A: Yes, an SFA may prescribe geographic preference in their solicitation in terms of actual percentage (e.g., ten percent price preference). Geographic preference can be prescribed in terms of points or percentages. The solicitation document must clearly outline the scoring criteria and the method in which the criteria will be evaluated.

Q7: How many geographic preference points can an SFA assign to geographic preference? What is the maximum price percentage an SFA can assign to geographic preference?

A: The Federal regulations do not prescribe the number of preference points or maximum price percentage an SFA can assign to geographic preference. Generally speaking, any price preference (prescribed as points or percentage) 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.

Q8: Can SFAs split up large purchases into smaller amounts and thereby fall under the small purchase threshold?

A: SFAs cannot intentionally split purchases in order to fall below the Federal, State, or local small purchase threshold in an effort to avoid more rigorous procurement practices. However, 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, such as shorter shelf-life, specialized pricing mechanisms, and durability. Similarly, an SFA may find that fresh produce may be considered a separate market given that it shares similar characteristics as bread and milk, and may want to separate this procurement from their overall food procurement.

Q9: An SFA would like to conduct a procurement under the small purchase threshold. Can the SFA procure unprocessed locally grown or locally raised agricultural products directly from a local farmer?

A: Yes; however, the procurement must be conducted in a manner that maximizes full and open competition. According to the Federal regulations, the SFA can conduct a procurement under the small purchase threshold if the procurement is under \$100,000 in value. States or localities may set a lower small purchase threshold and thereby impose more formal procedures. The SFAs should put the number, quality and type of goods in writing before contacting any potential offerors. When using the small purchase threshold, we recommend that at least three sources be contacted who are eligible, able and willing to provide the unprocessed locally grown or locally raised agricultural product. Contacting a minimum of

three sources ensures that an adequate number of potential offerors will be afforded the opportunity to respond to the solicitation.

Q10: An SFA would like to conduct a procurement under the small purchase threshold. Can the SFA procure unprocessed locally grown or locally raised agricultural products directly from a teacher that works for one of the schools in the SFA's school district?

A: The procurement must be conducted in a manner that maximizes full and open competition. The Federal regulations prohibit an employee, officer or agent of the grantee or subgrantee (i.e., SA or SFA) to participate in the selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. A contract award to a teacher in an SFA's school district creates an appearance of impropriety and generates the question of whether or not free and open competition has been circumvented. Therefore, a conflict of interest, real or apparent, may be involved if a teacher that works for one of the schools in the SFA's school district is awarded a contract.

Q11: May an SFA give geographic preference to farmers in a neighboring country (i.e., Mexico or Canada) for foreign unprocessed agricultural products when procuring unprocessed locally grown or locally raised agricultural products?

A: An SFA must adhere to the Buy American clause which requires SFAs to purchase domestically grown foods to the maximum extent possible. An SFA may purchase foreign goods only if the two rare exceptions to the Buy American provision are met: (1) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and (2) competitive bids reveal the costs of a U.S. product is significantly higher than the foreign product.

Q12: A State regulation requires State governmental entities to give geographic preference to local State farmers and prescribes a method on how geographic preference can be incorporated in the State governmental entities' solicitation. Is an SFA required to follow the State's regulation on geographic preference?

A: No. Under the principles of federalism, a State has the right to create a regulation of this nature; however, the application of the State's regulation to the Federal Child Nutrition Programs is an entirely different matter. Please keep in mind that States cannot mandate through law or policy that institutions apply a geographic preference when conducting procurements for the Federal Child Nutrition Programs, because the National School Lunch Act (NSLA) grants this authority directly to the purchasing institution (i.e., SFA or SA making purchases on behalf of the SFA).

Q13: Where does an SFA go to obtain help in developing bid sheets that use geographic preference? Does USDA have examples of solicitations that use geographic preference?

A: An SFA should start by contacting its SA for assistance in developing bid sheets and for examples of solicitations that use geographic preference. USDA is in the process of creating tools that will assist in this area. USDA has created an online training on procurement, *State Agency Guidance on Procurement*, that can be found at <http://www.nfsmi.org>. Additionally,

the USDA Farm to School website (<http://www.fns.usda.gov/cnd/f2s/>) provides information on the procurement requirements, as well as Q&As directly related to local food purchases.

Unprocessed Agricultural Product

Q14: Can an SFA apply the geographic preference option in the procurement of ground beef?

A: As we stated in our policy memo dated November 13, 2009, we further amended the previous guidelines regarding what is to be considered to be unprocessed locally grown or locally raised agricultural products. In our view, for the purpose of applying a geographic procurement preference in the Child Nutrition Programs, unprocessed agricultural products means only those agricultural products that retain their inherent character. Size adjustment made by grinding does not change an agricultural product into a product of different kind or character. Therefore, an SFA can apply the geographic preference option in the procurement of ground beef if no other items such as additives or preservatives are added to the ground beef.

Q15: Can an SFA give geographic preference when procuring a frozen bag of combination local vegetables (e.g., broccoli, cauliflower and carrots) from a bidder?

A: Yes, the inherent character of the vegetables is retained and not modified by freezing or combining vegetables in a bag.

Q16: Can an SFA give geographic preference when procuring fresh local vegetables in portion sized or single serving bags (e.g., small bags of carrots) from a bidder?

A: Yes, the inherent character of the vegetables is retained and not modified by placing vegetables in portion sized or single serving bags.

Q17: Can an SFA give geographic preference when procuring canned local vegetables from a bidder?

A: No, the inherent character of the vegetables is not retained because the heating process involved in canning changes the agricultural product into a product of a different kind or character.

From USDA F2S Website

Procurement Q&A

1. What are the available procurement methods in the school meals programs?

When using nonprofit food service account funds, School Food Authorities (SFAs) must follow their own State and local rules except where those rules are inconsistent (less restrictive) with the federal requirements.

In those cases, the SFA must substitute and follow the more restrictive federal requirements at [7 CFR 3016](#) and [3019](#).

When procuring goods and service for the school meal programs, an SFA must determine whether they will use an informal or formal method of procurement. It is important for SFAs to understand and then identify which method best meets the needs of their food service operation.

The procurement methods are designed to provide free and open competition and ensure that Federal funds—when used to purchase products or services—result in the best and most responsive product at the lowest possible price.

- **What is the informal procurement method?**

The informal procurement method is formally known as the small purchase or simplified acquisition threshold. The small purchase method is a relatively simple and informal procurement method that is appropriate for a procurement of goods and services costing not more than \$100,000 (the current Federal small purchase threshold), or a lesser amount specified by State law or local requirements.

Though procurements conducted using the small purchase threshold follow a less rigorous process than the formal methods of sealed bidding or competitive negotiation, competition is still required. SFAs must always adhere to procurement regulations when purchasing any amount of goods or services using nonprofit school food service account funds. While relatively simple and less formal than the formal methods of procurement, the informal method of procurement still requires that the SFA compete for goods or services using an appropriate solicitation document and competitive process. The SFA must develop a written solicitation to identify the number, quality, and type of goods or services needed and use the solicitation to solicit goods or services from each potential offeror. Unlike the formal procurement methods which require public advertisement, when using an informal method an SFA may directly contact potential competitive sources. The decision whether to formally advertise or simply contact three or more potentially qualified sources is left up to the SFA.

SFAs must check with their administering State agency and local officials to determine the small purchase procedures that must be followed in their respective state or district. State and local regulations may set the simplified acquisition threshold at a lower, more restrictive level than the federal threshold (for example, \$50,000 State threshold instead of the Federal threshold of \$100,000). State and local agencies are encouraged to assess their current small purchase regulations and evaluate if their threshold best fits their needs.

- **What are the formal procurement methods?**

If the value of an SFA's procurement meets or exceeds the applicable federal, state, or local threshold for small purchases, the SFA must use the formal, more rigorous method of procurement. The two formal procurement methods available are Competitive Sealed Bidding, commonly referred to as sealed bidding, and Competitive Proposals, formerly called competitive negotiation.

The first formal method of procurement is:

Competitive Sealed Bids, i.e. an invitation for bid (IFB). The competitive sealed bids is a method of procurement in which sealed bids are publicly solicited (i.e. through an invitation for bid) resulting in the award of a firm-fixed price contract, fixed price contract with economic price adjustment or fixed price contract with prospective price redetermination, to the responsible bidder whose bid is responsive to the invitation for bid IFB, conforms with all the material terms and conditions of the invitation for bids, and is lowest in price. In this case, the IFB must be

publicly advertised and 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.

Competitive sealed bidding is used when:

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

The second formal method of procurement is:

Competitive Proposals, i.e. a request for proposal (RFP). The competitive proposal is a method of procurement whereby a technical proposal is solicited that explains how the prospective contractor 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 negotiation is used when the SFA lacks specificity and is requesting goods and services that are not “one size fits all.” Another indicator that an SFA should use the competitive negotiation method of procurement is when expectations can be identified, but more than one method can be used to achieve the SFA’s desired outcome. In the case of an RFP, criteria allows for the measurement of factors that differ along other dimensions than just price. The use of competitive negotiation requires that sufficient skill and expertise be available to allow for proper evaluation of the proposals and to conduct negotiations with top offerors.

For additional information on each of these procurement methods in your state, please contact your State Agency.

2. Do these rules and regulations prohibit an SFA from purchasing locally?

No, but in properly following the regulations, an SFA must ensure that they do not restrict competition. Some examples of unallowable practices that restrict competition include:

Unreasonable requirements – placing unreasonable or overly restrictive requirements on suppliers in order for them to qualify to do business, e.g., requiring unnecessary experience or bonding requirements.

Noncompetitive practices – encouraging noncompetitive practices, e.g., collusion between vendors or farmers. Failing to adequately advertise and solicit prices could encourage potential suppliers to manipulate their bid prices.

Conflicts of interest – allowing conflicts of interest to occur. Conflicts of interest are present when a less than arms-length transaction takes place. This can occur when the individual(s) responsible for determining bid/proposal responsiveness can be overruled by other individuals within the organization, e.g. Board members, or if the individual responsible for determining responsiveness (or any member of his/her family) has any personal or financial interest in any of the offering firms.

Using a respondent’s bid specifications – using bid specifications or contract terms written by a potential contractor. A person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by an SFA in conducting a procurement under the USDA entitlement

programs shall be excluded from competing for such procurements.

Insufficient time – not allowing bidders/offerors sufficient submission time when soliciting the invitation for bid or request for proposal.

Geographic preferences – using in-state or local geographic preferences that are not in keeping with the new regulations established by the Farm Bill of 2008.

3. What does the 2008 Farm Bill mean for me?

When purchasing locally, it is important to understand the regulations of the recently enacted Food, Conservation, and Energy Act of 2008 (P.L. 110-246), also known as the Farm Bill, which applies to procurements in the Child Nutrition Programs. Section 4302 of the Farm Bill amended section 9(j) of the Richard B. Russell National School Lunch Act (NSLA) to require the Secretary of Agriculture to encourage institutions operating the Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products.

This means that institutions receiving funds through the Child Nutrition Programs may now apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. This applies to operators of all of the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program, Child and Adult Care Food Program, and Summer Food Service Program, as well as to purchases of fresh produce for these programs by the Department of Defense.

It is important to remember that when a school food authority (SFA) chooses to purchase from local producers, they must still observe all the regulations that apply when purchasing food for the school meal programs using nonprofit school food service account funds. These procurement regulations are in place to ensure that Federal funds, when used to purchase products or services, result in the best and most responsive product at the lowest possible price. For a list of the memos outlining the rules for applying a geographic preference when purchasing locally grown unprocessed agricultural products, please visit the Policy page:

<http://www.fns.usda.gov/cnd/F2S/f2spolicy.htm>

[Q&A #9](#) further explains how a geographic preference can be applied.

4. What types of products do the Farm Bill's geographic preference regulations pertain to?

Geographic preference may only be applied to the procurement of unprocessed agricultural products which are locally grown and locally raised.

The Managers of the Farm Bill legislation used the term “unprocessed” to “preclude the use of geographic preference for agricultural products that have significant value added components.” However, allowable items under geographic preference include de minimis handling and preparation such as might be necessary to present an agricultural product to a school food authority in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton.”

Accordingly, FNS has recently updated our initial guidance to expand the definition of unprocessed agricultural products—or agricultural products that retain their inherent character. A school may now use a geographic preference for unprocessed agricultural products that have been chopped, cut, sliced, diced or shucked.

For purposes of applying a geographic procurement preference in the Child Nutrition Programs, “unprocessed agricultural products” means only those agricultural products that retain their inherent character. The effects of the following handling and preservation techniques shall not be

considered as changing an agricultural product into a product of a different inherent character:

Cooling, refrigerating, freezing; size adjustment through size reduction made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; drying/dehydration; washing; the application of high water pressure or “cold pasteurization”; packaging (such as placing eggs in cartons) and vacuum packing and bagging (such as placing vegetables in bags); butchering livestock, fish and poultry; and the pasteurization of milk.

5. Does the Farm Bill require schools to purchase local, unprocessed products?

No. While the statute permits institutions to apply a geographic preference to the maximum extent practicable and appropriate, it does not require institutions to purchase locally grown and locally raised agricultural products, or to apply a geographic preference in their procurements of these products. Moreover, States cannot mandate through law or policy that institutions apply a geographic preference when conducting these procurements; the NSLA grants this authority directly to the institutions. The institution responsible for the procurement has the discretion to determine whether and how a geographic preference meets its needs.

6. According to the new Farm Bill regulations, institutions receiving funds through the Child Nutrition Programs may apply a geographic preference when procuring unprocessed locally grown or raised agricultural products. How is “local” defined? For example, could a school only accept bids/offers for unprocessed agricultural products from local farmers within a 50 mile radius?

Due to the geographic diversity in each state, the institution responsible for the procurement has the discretion to define the area for any geographic preference (e.g., State, county, region, etc.). However, it is important to keep in mind that local preference should not be defined in a way that unnecessarily limits competition.

7. The Farm Bill legislation states that de minimis handling and preparation might be necessary to present an agricultural product to a school food authority in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton. Does produce that has been chopped or cut fall into the category of “minimal handling and preparation necessary to present in a useable form?”

Unprocessed agricultural products that have been chopped, cut, sliced, diced or shucked do meet the parameters of unprocessed as used in the Farm Bill. Therefore, SFAs and other service institutions may use a geographic preference when procuring those agricultural products. See memorandum [SP-01-2010](#) for more information.

8. Can an SFA purchase food directly from a farmer?

Yes, as long as the SFA observes all the regulations that apply when purchasing food using nonprofit school food service account funds. This can be found at [7 CFR 210.21](#), [7 CFR 220.16](#), and [7 CFR 3016.36](#).

Procurement regulations are in place to ensure that Federal funds, when used to purchase products or services, result in the best and most responsive product at the lowest possible price. The most important principle of procurement is that it must always be conducted in a manner that provides maximum free and open competition. Free and open competition means that all suppliers are “on a level playing field” with the same opportunity to compete. Procurement procedures must not restrict or eliminate competition. While a geographic preference may be used to encourage the purchase of locally grown and locally raised products by enabling an institution to grant an advantage to local growers, this provision does not eliminate the requirement for procurements to be conducted in a manner that allows for free and open competition, consistent with the purchasing institution’s responsibility to be responsible stewards of federal funds. Please see question #10 for examples of how this procurement may work.

9. According to the new Farm Bill regulations, institutions receiving funds through the Child Nutrition Programs may apply a geographic preference when procuring unprocessed locally

grown or locally raised agricultural products. Does this mean competition does not need to occur and schools can simply pick a farmer to provide them with fresh, unprocessed vegetables?

No. The most important principle to a good procurement is that it is competitive and allows for free and open competition. When using a geographic preference to procure locally unprocessed agricultural products, competition still must occur. However, the way in which a geographic preference is applied depends on whether the procurement method is informal or formal.

If using the informal method, i.e. when procuring items which fall under the small purchase threshold, an institution must still develop a written specification document outlining the products they are seeking. The institution should get price quotes from at least three sources/farmers when procuring unprocessed locally grown or locally raised agricultural products, so that competitors have an opportunity to compete for the bid. Competition is maintained by comparing the price quotes from the sources to the SFA's developed specification, to determine which bidder is the most responsive and responsible.

If the procurement exceeds the small purchase threshold, a formal procurement method must be used. This involves the sealed bidding process (i.e. IFB) or the competitive negotiation process (i.e. RFP). This would entail public notification of the solicitation developed by the SFA. In the scoring criteria contained in the solicitation, the SFA can incorporate the use of geographic preference points into the criteria. This indicates to bidders that—upon the SFA's scoring of their solicitation for locally unprocessed agricultural products—preference points may be granted to the local sources/farmers who respond to the solicitation and are able to provide the requested unprocessed agricultural products.

10. Can SFAs split up large purchases into smaller amounts and thereby fall under the small purchase threshold?

No, SFAs cannot intentionally split purchases in order to fall below the federal small purchase threshold in an effort to avoid more rigorous procurement practices. However, there may be some instances in which a segment of the marketplace supports the need to separate 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, such as shorter shelf-life, different pricing mechanisms, durability, and, in some cases, having a clearly defined local market due to their distinctive characteristics. Similarly, an SFA may find that fresh produce may be considered a separate market given that it shares similar characteristics as bread and milk.

The following are two examples that may help an SFA to purchase local produce:

- If a state's small purchase threshold is \$100,000 and an SFA will be purchasing \$150,000 worth of items for the salad bar, they cannot split the purchase into two purchases of \$75,000 each to fall below the state's threshold. However, an SFA's purchase of produce may constitute a separate market due to its shelf life and pricing structure, and therefore the SFA may be able to separate out the procurement of the fresh produce which may, under the small purchase threshold, allow them to contact three local vendors rather than conducting a formal procurement. Please keep in mind that every produce purchase does not necessarily constitute a separate market, thereby justifying a separate procurement for the local produce. For example, a school regularly purchases apples as part of their larger food procurement from a distributor. The apples purchased for the program may not necessarily constitute a separate market, as they have a longer shelf life than other produce and may easily be provided fresh from a distributor at a reasonable cost. Each SFA must carefully assess their own particular purchasing mechanisms and methods, and determine what is reasonable in the situation.
- If an SFA is participating in a curriculum related activity such as a "Harvest Week" where it is necessary to procure specific food items, it may make sense for the SFA to conduct a separate procurement for those specific products. If this procurement does in

fact fall below the small purchase threshold, the SFA will be able to procure through the informal procurement method which may facilitate their purchasing process.

**EXCERPTED FROM USDA 08-2010
GEOGRAPHIC PREFERENCE FOR THE PROCUREMENT OF UNPROCESSED
AGRICULTURAL PRODUCTS IN THE CHILD NUTRITION PROGRAMS**

The purpose of this memorandum is to update the definition of what is considered “unprocessed” for the purposes of applying the optional geographic preference for procurement in the Child Nutrition Programs.

Section 4302 of Public Law 110-246, the Food, Conservation, and Energy Act of 2008, amended section 9(j) of the Richard B. Russell National School Lunch Act (NSLA) to allow institutions receiving funds through the Child Nutrition Programs to apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products. This provision applies to operators of all of the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program, Child and Adult Care Food Program and Summer Food Service Program, as well as to purchases made for these programs by the Department of Defense Fresh Program. The law also applies to State Agencies making purchases on behalf of local agencies under any of the aforementioned Child Nutrition Programs.

This statutory provision was implemented by policy memorandum SP 30-2008, *Applying Geographic Preferences in Procurements for the Child Nutrition Programs* (July 9, 2008), as well as SP 08-2009 *Procurement Questions* (January 9, 2009) and SP 28-2009 *Procurement Questions* (July 22, 2009). These initial FNS guidance documents specified that the geographic procurement preference option may only be applied to the procurement of unprocessed agricultural products which are locally grown and locally raised and that have not been cooked, seasoned, frozen, canned, or combined with any other products, or have not been chopped, cut, diced or sliced. After observing the impact of the Agency interpretation of the term “unprocessed” during the past year, we determined that our initial guidance was unnecessarily restrictive and had the potential to prevent participating Child Nutrition Program operators from receiving locally grown or raised products in a usable form. Accordingly, we recently updated our initial guidance to add that unprocessed agricultural products that have been chopped, cut, sliced, diced or shucked do meet the meaning of the term “unprocessed” as intended by the statute.

At this time, we are further amending the previous guidelines regarding what is to be considered to be “unprocessed locally grown or locally raised agricultural products” when applying the geographic procurement preference option. In our view, for purposes of applying a geographic procurement preference in the Child Nutrition Programs, “unprocessed agricultural products” means only those agricultural products that retain their inherent character. The effects of the following handling and preservation techniques shall **not** be considered as changing an agricultural product into a product of a different inherent character: cooling, refrigerating, freezing; size adjustment through size reduction made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; drying/dehydration; washing; the application of high water pressure or “cold pasteurization”; packaging (such as placing eggs in cartons) and vacuum packing and bagging (such as placing vegetables in bags); butchering livestock, fish and poultry; and the pasteurization of milk.

**EXCERPTED FROM USDA SP 02-2010
LOCAL PURCHASING**

Q: According to the new Farm Bill regulations, institutions receiving funds through the Child Nutrition Programs may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. Does this mean competition does not need to occur and schools can simply pick a farmer to provide them with fresh, unprocessed vegetables?

A: No. The most important principle to a good procurement is that it is competitive and allows for free and open competition. An institution must still get quotes from several farmers when procuring unprocessed locally grown or locally raised agricultural products, so that competitors have an opportunity to compete for the bid. The way in which a geographic preference is applied could depend on whether the procurement method is informal or formal. If informal, i.e. falling below the small purchase threshold, a school food authority (SFA) may simply want to approach approximately 3-4 local producers and obtain price quotes. Competition is ensured by developing a solicitation that contains criteria which all the respondents will be subject to. If the procurement exceeds the small purchase threshold, a formal procurement method must be used which would involve the sealed bidding process (i.e. IFB) or the competitive negotiation process (i.e. RFP). This would entail public notification of the solicitation; however, when procuring locally unprocessed agricultural products the notification may be focused on the locale in which the school is situated as a criteria of the solicitation. In a situation where the solicitation for locally unprocessed agricultural products is in fact open to offerors beyond the local area, a way in which to apply a geographic preference is to grant preference points to the local farmers who respond to the solicitation.

Q: According to the new Farm Bill regulations, institutions receiving funds through the Child Nutrition Programs may apply a geographic preference when procuring unprocessed *locally* grown or raised agricultural products. How is “local” defined? For example, could a school only accept bids/offers for unprocessed agricultural products from local farmers within a 50 mile radius?

A: Due to the geographic diversity in each state, the institution responsible for the procurement has the discretion to define the area for any geographic preference (e.g., State, county, region, etc.). However, it is important to keep in mind that local preference should not be defined in a way that unnecessarily limits competition.

FROM USDA SP 32-2009 SCHOOL GARDENS Q & A

1. Q: Can the school food service use funds from the nonprofit school food service account to purchase seeds for a school garden?

A: Yes, with the understanding that the garden is used within the context of the program, i.e selling the food or providing food in the classroom as part of an educational lesson.

2. Q: Can the school food service use funds from the nonprofit school food service account to purchase items for the school garden such as fertilizer, watering cans, rakes, etc.?

A: Yes, as long as the items are used for the purpose of starting and maintaining the garden.

3. Q: Can a school sell food grown in their school garden that was funded using the nonprofit school food service account?

A: Yes, as long as the revenue from the sale of the food accrues back to the nonprofit school food service account. Schools can serve the produce as part of a reimbursable meal or sell it a la carte, to parents, to PTA members, at a roadside stand, etc.

4. Q: Are there health/safety issues involved with school gardens?

A: Yes. SFAs need to familiarize themselves with the Federal, State, and local requirements regarding health and sanitation issues.

5. Q: Can the school food service purchase produce from another school organization that is maintaining and managing the garden, such as Future Farmers of America (FFA)?

A: Yes, the school food service may purchase produce from a garden run by a school

organization such as FFA, which is an agricultural education program for students.

6. Q: Can funds received through the Fresh Fruits and Vegetables Program (FFVP) be used to purchase seeds/tools/equipment for a school garden?

A: No. FFVP funds may not be used for the purchase of any materials for school gardens.

7. Q: What if there is excess produce from the garden left over at the end of the school year?

A: The school should first see if the excess food can be used to benefit another program such as the SFSP. If that is not possible, they could try selling the food (as always, the profit must accrue back to the nonprofit school food service account) or donate it in accordance with State and local health/safety regulations.

Resources

USDA Memos <http://www.fns.usda.gov/cnd/governance/policy.htm>

USDA F2S <http://www.fns.usda.gov/cnd/f2s/Default.htm>

First Choice

Choice Plus

Fruit and Vegetables Galore.

Your Consultant

Bureau of Nutrition, Health and Transportation Services School Program Staff

Bureau Chief/Administrative Consultant

Ann.Feilman@iowa.gov (515) 281-4757

Administrative Consultant

Patti.Harding@iowa.gov (515)281-4754

Consultants

Central Iowa

Jane.Heikenen@iowa.gov (515) 281-4753

Jaclyn.Yetmar@iowa.gov Home Office (515) 573-5249

Cell (515) 681-2302

Dean.Flaws@iowa.gov (515) 281-4032

Keerti.Patel@iowa.gov (515) 281-3353

Diana.Weber@iowa.gov (515) 281-5663

Carrie.Scheidel@iowa.gov (515) 281-4760

SE Iowa

Cheryl.Benson@iowa.gov Cell (515) 868-2847

River Bend Area

Sandra.Fiegen@iowa.gov Home Office (319) 377-1898

Cell (515) 681-5750

NE Iowa

MaryKay.Madsen@iowa.gov Home Office (319) 236-3416

Cell (515) 681-2303

NW Iowa

Marlene.Jepsen@iowa.gov Home Office (712) 368-2790

Cell (515) 681-5752

SW Iowa

Jan.Steffen@iowa.gov

Home Office (712) 774-5674
Cell (515) 681-2301

TEAM Nutrition

Patti.Delger@iowa.gov

Sandra.Fiegen@iowa.gov

(515) 281-5676
Home Office (319) 377-1898
Cell (515) 681-5750

NE Iowa

MaryKay.Madsen@iowa.gov

Home Office (319) 236-3416
Cell (515) 681-2303

NW Iowa

Marlene.Jepsen@iowa.gov

Home Office (712) 368-2790
Cell (515) 681-5752

SW Iowa

Jan.Steffen@iowa.gov

Home Office (712) 774-5674
Cell (515) 681-2301

TEAM Nutrition

Patti.Delger@iowa.gov

(515) 281-5676