

DRAFT: Understanding different purchasing agreements in the School Nutrition Programs (SNP)

| Purchasing agreements identified to facilitate procurement by School Food Authorities (SFA) | | |
|---|---|--|
| SFA only co-operatives | 3rd Party: Group purchasing organizations, group buying organizations, third-party vendors; Inter-agency agreements, State procurement agency agreements, Non SFA entities :Public, private or nonprofit | Agents |
| <p><i>An agreement formed solely between SFAs to increase purchasing power.</i></p> <ul style="list-style-type: none"> This agreement is not a method of procurement, rather an agreement to competitively procure goods and services. Such agreements may include a fixed fee to cover overhead or administrative costs as specified in the cooperative agreement. | <p><i>The following agreement types may be used as one source of prices when competitive procurement methods are conducted by the SFA, as applicable.</i></p> <ul style="list-style-type: none"> <u>Group Purchasing Organizations, Buying Organizations, and Third-Party Vendors.</u> <ul style="list-style-type: none"> Collectively referred to here as GPOs, private for-profit or nonprofit entities, may include SFAs and public/private schools, hospitals, universities, etc. who join a third-party company/ service provider. May include a membership fee paid by member users, who are granted access to GPO price list of products and services. State procurement agency agreements: inter-governmental agreement with the State; may include public, private, and non-profit entities. <ul style="list-style-type: none"> This procurement service is <i>not</i> part of SNP State agency and services are conducted for State facility needs using State procurement standards The State allows local educational agencies (LEAs), SFAs, to purchase from these contracted sources. | <p><i>Person or business authorized to act on SFA's behalf.</i></p> <ul style="list-style-type: none"> SFAs should consider their procurement procedures to determine if use of an agent is the best approach when/if SFA does not have necessary technical understanding of equipment, service, food or supplies to be purchased; or lacks time or expertise to conduct proper procurement. A procurement agent represents a special fiduciary relationship of trust between itself and its SFA. The agent must be contractually required to conduct all competitive procurement methods with the SFA's interests solely in mind. An agent's services in excess of the micro-purchase threshold currently set at \$3,500 must be competitively procured in accordance with Federal procurement (2 CFR 200.320) |
| Procurement process to follow when procuring goods and services within the above agreement types | | |
| <p>Requirements for all SFA procurements and agreements:</p> <ul style="list-style-type: none"> The competitive process conducted by SFAs may vary by agreement type but all competitive procurements must be in accordance with 2 CFR 200.318-.326 and all other applicable federal, state and local regulations and guidance. Under micro-purchase threshold < \$3,500, prices would be reasonable, and purchases would be equitably distributed among qualified suppliers. If the SFA later determines additional goods/services are needed but not included or available from sources already procured, the SFA may purchase items using the applicable procurement methods and maintain records detailing the history of the procurement as required in 2 CFR 200.318(i) Published solicitations and contracts must include all terms, conditions, required contract provisions including cost-reimbursable provisions, as applicable, and all products descriptions, specifications, and estimated quantities. Buy American provision SFA is responsible for monitoring contractor performance to ensure compliance with all contract provisions. Written agreements delineating roles and responsibilities are encouraged. Adding parties to a contract (piggybacking): Contracted parties considering additional parties must include a provision allowing "piggybacking" in their contracts in order to avoid creating a material change. If such a provision is not included in the contract and a material change is determined, a new competitive procurement is required. Language should include specifying applicable limitations of the extension (e.g., dollar value or the number of additional parties that may be added). Such contracts should be reviewed by members to ensure they meet their needs and conform to requirements. | | |
| <p>A cooperative that is comprised solely of SFAs or BOCES members may procure as a group and must do so in compliance with the procurement standards that</p> | <p>Group Purchasing Organizations, Buying Organizations, Third-Party Vendors.</p> <ul style="list-style-type: none"> The business of a GPO may include a variety of services such as facilitating procurement for members/member agencies and procuring products and services from an external source such as an affiliated or unaffiliated full-line distributor. Membership involves paying a fee in addition to the price of products and | <p>Agent. If an agent is needed to procure goods/services on behalf of the SFA, the SFA must determine if agent fee is within micro-purchase threshold or if a competitive procurement method must be conducted for the services.</p> <ul style="list-style-type: none"> If a solicitation is required, the scope of duties and |

| | | |
|--|--|--|
| <p>apply to the SFA</p> <ul style="list-style-type: none"> • Under SFA only cooperative agreements, the SFAs, as defined in the scope of the solicitation, cannot materially change from the original group who plan to purchase together. • Forecasting activities conducted prior to the formation of this cooperative should include actual and potential members of the cooperative and the solicitation should clearly define the expected level of members in the scope. • BOCES: May be composed of several school districts in a region (of a State) in order to provide shared educational services, including cooperative purchasing in some cases, to the school districts of that region. • They may exist under State statute and/or receive funding from the State legislature and membership may be automatic for those public schools in the region. A • gain, such SFA-only cooperatives must follow, at a minimum, Federal procurement regulations when procuring goods and services for its members. | <p>services purchased.</p> <ul style="list-style-type: none"> • Paying a fee does not constitute compliance with competitive procurement process that SFAs are required to conduct • SFAs may pay a membership fee to multiple GPOs and may consider <i>the price for products from GPOs as one source among an adequate number of qualified sources.</i> • Formal procurement of goods/services over local threshold: SFAs must publish sealed bids or competitive proposals to which GPOs may respond if GPO has not drafted solicitations. • Likewise, responses to bids/proposals must be evaluated by the SFA to determine the lowest responsible and responsive bidder/offeror with price as the primary factor. • Purchasing goods and services from a GPO without conducting a compliant procurement process is limited to micro-purchase <p>Third-Party entities.</p> <ul style="list-style-type: none"> • Agreements that include a fee to cover overhead or administrative costs must be specified therein. • Other parties outside of these arrangements may be added to properly procured contracts that meet all applicable Program regulations when included in the original solicitation; <p>State procurement agency agreements: <i>The SFA may consider a non-SNP State agency's procurement as one source for procurement.</i></p> <ul style="list-style-type: none"> • If the procurement is less than State or local threshold; using most restrictive, the SFA may obtain a price or rate quotation from the State's procured sources, <i>among other qualified sources available.</i> • For procurements over formal threshold, SFA must first conduct a cost analysis then develop a sealed bid or competitive proposal <i>and use vendors/prices from State's contract as one source.</i> • <i>It is not the State procurement agency agreement that is the competitive procurement;</i> but gives the SFA further options of sources to utilize to ensure full and open competition. <p>SNP State agency cooperative agreements:</p> <ul style="list-style-type: none"> • SFAs may purchase from a SNP State agency's procured sources without further competition if the State agency procures on behalf of SFAs following procurement standards and regulations and 2 CFR 200.318-.326. • State agencies must clearly define the scope of SFAs in the cooperative. • If SFAs determine additional goods and services are needed but were not procured by CDHS or are not available from the procured source, the SFA must conduct separate competitive procurement procedures using the applicable procurement methods. • The solicitation and contract must outline how each discount, rebate, credit will be returned and how each proportionate value pass-through method for crediting the value of USDA foods will be returned and/or disclosed to SFA | <p>responsibilities must be clearly defined as well as how prices/costs for services are to be quoted for evaluating agents' bids/responses for contract award.</p> <ul style="list-style-type: none"> • Some agents often charge fees to vendors who pass such fees on to the SFA. Fees must be fixed based on a purchase unit, volume or cost (fees cannot be a percentage of cost). • Agents cannot be considered if they do not openly provide full price per purchase unit for their service. • Paying a fee does not constitute a solicitation or contract with an agent. • SFAs must include language that details "when procuring goods or services for their SFA, agents must follow procedures consistent with 2 CFR Part 200.318-.326 and applicable program regulations" which includes State and local procurement requirements if more restrictive. • The procurement agent must confirm in writing to the SFA that it will represent the SFA and will have the SFA's best interests exclusively in mind when preparing solicitations for publication on the SFA's behalf. • The agent may not have any conflict of interest, real or apparent. • The agent may not use pre-existing contractual relationships in lieu of conducting a competitive procurement on behalf of the SFA <p>In order to ensure free and open competition, the procurement agent must:</p> <ul style="list-style-type: none"> • work closely with SFA to understand SFA needs, • develop solicitations on SFA's behalf consistent with 2 CFR 200.318-.326 and Program regulations • award contracts only to responsible contractors whose bid/offer is lowest/most advantageous to the Program with price as the primary factor, • award fixed-price or cost-reimbursable contracts • monitor the contract on behalf of SFA as required in if specified in the original agent solicitation/contract. • agents may not respond to solicitations drafted on behalf of the SFA as this would be conflict of interest and violation of Federal regulations. |
|--|--|--|