



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: June 12, 2012

MEMO CODE: SP 35-2012

SUBJECT: Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

State agencies (SA) and school food authorities (SFA) have recently brought to our attention that entities that self-identify as purchasing cooperatives, group purchasing organizations, and group buying organizations, etc., often, in their offer to help SFAs connect with other entities such as purchasing cooperatives and the like, represent to SFAs that it is not necessary to undertake formal procurement efforts in order to retain the entities' services. In response to SAs and SFAs' requests for guidance, this memorandum outlines applicable regulatory provisions and principles applicable to SFAs seeking the services of such entities.

Competition is Key

All SFAs must follow Federal procurement regulations when entering into contractual agreements with entities for goods or services. As a result, SFAs are required to conduct procurement transactions in a manner providing full and open competition, in accordance with Federal regulations at 7 CFR 210.9, 210.21 and 3016.36(c). Those requirements apply when an SFA seeks the services of an entity such as a purchasing cooperative, group purchasing organization or group buying organization, or an entity offering to facilitate access to those types of entities. This is true even when services are offered free of charge. Competition ensures the best quality product or service at the lowest price. Therefore, the SFA should always seek advice from the SA before agreeing to use any services without conducting a competitive procurement.

Cooperatives and SFAs

An SFA may participate in a cooperative comprised solely of SFAs without conducting a competitive procurement if the local cooperative was created by SFAs banding together to form a cooperative in order to increase purchasing power. An SFA would not need to undertake a procurement because the cooperative is designed to *act on its own behalf*. A cooperative would follow Federal procurement regulations when procuring goods and

Regional Directors

State Directors

Page 2

services for its members. In other words, a cooperative that is comprised of solely SFAs procuring as a collective group of SFAs must procure in the same manner as an individual SFA.

However, SFAs must be careful not to assume that a cooperative is comprised solely of SFAs that act on their own behalf. For example, if the cooperative contains a third party that is not an SFA, this generally means the SFA cannot join the cooperative without conducting a competitive procurement.

Intergovernmental Cooperation and “Piggybacking”

Intergovernmental agreements can benefit both SAs and SFAs. However, an SFA may only enter into an intergovernmental agreement with an SA or local governmental agency which allows the SFA to join or “piggyback” onto an existing agreement between that SA or local governmental entity and a goods or service provider when that agreement was procured consistent with applicable CNP regulations. An SFA should carefully review the solicitation issued by the SA or local governmental agency and the resulting contract to ensure compliance with applicable CNP regulations and to ensure that the additional scope in services does not create a material change.

Obtaining documentation from the parties involved in the existing contract in order to ensure the return of discounts, rebates, and other applicable credits in addition to compliance with other Federal requirements is key. For example, an SFA may “piggyback” onto an SA or local governmental entity’s (e.g., public university, public agency, etc.) procured cost reimbursable contract if the original contract between the State or local governmental entity and contractor (e.g., prime vendor, distributor, etc.) contains program requirements pertaining to the return of discounts, rebates, and other applicable credits to the SFAs nonprofit food service account. With that in mind, an SFA may consult their own counsel to ensure that any existing contract will ensure access to all records, reports, and documents to ensure that rebates, discounts, and other applicable credits accrue to the SFA.

Finally, material changes to the existing contract may arise as a result of the “piggybacking” because the parties to the existing contract may not have anticipated the increased quantity of goods and services necessary to fulfill the needs of the SFA. Consequently, an SA or local governmental entity may have to rebid at the next juncture because of these material change issues.

SFAs should seek guidance from the SA prior to executing an intergovernmental agreement with an SA or local governmental entity which allows the SFA to “piggyback” onto an existing contract. If you have any questions, please contact your Regional Office.



Cynthia Long

Director

Child Nutrition Division