

Group Purchasing through Cooperatives, Agents, and Third-party Entities



And Helps with the
Buy American
Provision

SP05-2017; SFSP02-2017; CACFP03-2017



Welcome to the webinar to present the Q&A on Group Purchasing Through Cooperative, Agents and Third Part Entities which is for all Programs. We will have a short question and answer session after this section and then share a session on the Buy American provision. The Buy American Provision is for school food authorities so those who do not operate the National School Lunch program will have an opportunity to drop off the webinar at that time, if you desire to do so.

I am Wanda McNeil and we are co-hosting with Kirk Farquharson from Atlanta, GA. In the next hour we hope to provide an overview of the recent guidance published on Group Purchasing efforts and answer questions you may have related to this guidance. FNS has been working for some time to better understand these various purchasing efforts to facilitate procurement for Program operators. We hope this guidance defines the way FNS has categorized these groups, the competitive procurement methods required by regulations, and how the competitive process works when using each. So, without further ado, let me share a few webinar logistics, then we will begin.

You may notice the chat box on the bottom of your screen. This allows you to input questions throughout the webinar. We will seek to answer these questions during the webinar, so if at all possible, please do **not** hold your questions until the end. At the end, we will seek to answer the most frequently asked questions as time allows. Please stay with us through the end in hopes that we will answer these questions for all.

Let's begin.

Group Purchasing through Cooperatives, Agents, and Various Third-party Entities

- SP05-2017; SFSP02-2017; CACFP03-2017, *Q&A on Purchasing Goods and Services through Cooperatives, Agents, and Third-party Entities such as Group Purchasing/Group Buying Organizations, etc.*, dated October 20, 2016
- **Key information:**
 - Supersedes SP35-2012 to include all Child Nutrition Program operators
 - Ensures all costs are necessary, reasonable, allocable, and allowable
 - Seeks to maximize full and open competition



NOTE: Failure to conduct compliant procurement procedures violates Program regulations

We hope you accessed PartnerWeb to find SP05, SFSP02, and CACFP 03-2017 entitled, *Q&A on Purchasing Goods and Services through Cooperatives, Agents, and Third-party Entities such as Group Purchasing/Group Buying Organizations, etc.*, dated October 20, 2016. As shown on the screen, this guidance supersedes SP35-2012 as this guidance not only explains the various purchasing efforts but now includes all Child Nutrition Programs. We have identified that many Program operators are using these entities and now that 2 CFR 200 applies to all Programs, all Program Operators are included to ensure operators who might be using these groups do so in a manner that maximizes full and open competition. As you know, all costs to the program must be necessary, reasonable, allocable, and allowable to be paid with Federal funds and failure to conduct compliant procurement procedures is a violation of Federal regulations which **could** result in costs being prohibited. Therefore, we want to explain how we have grouped these entities and how they may be used in a way that is compliant with the government-wide and Program regulations.

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Group purchasing efforts identified
 - Child Nutrition Program (CNP) Program operator-only and/or CNP State agency cooperative agreements
 - Agents
 - Third-party entities (State-run cooperative, inter-agency, non-Program operators such as public, private and non-Profit entities, group purchasing organizations, third party vendors)

SP05-2017; SFSP02-2017; CACFP03-2017



When determining what cooperative agreements and group purchasing procurement procedures are allowed by Federal procurement regulations, this guidance identifies 3 categories of the various efforts in group purchasing, Program operator-only cooperative agreements which involves only Child Nutrition Program operators including the Child Nutrition State agency, Agents, **and a third-party entities such as State-run cooperatives and State agency procurement offices, inter-agency, non-Program operators such as public, private, and non-Profit entities, Group Purchasing organizations, etc.** . The categories are broad and a number of models exist, so FNS categorized these for ease of identifying not only the groups that may be purchasing together, but how the procurement standards work for each of these. Let's look at these more closely.

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Group purchasing efforts identified
 - CNP Program Operator-only and/or CNP State agency cooperative agreements
 - Program and government-wide regulations apply
 - Intergovernmental/inter-agency agreements are encouraged in 2 CFR 200.318(e)

SP05-2017; SFSP02-2017; CACFP03-2017



The first category is the Program operators only cooperative. Entities in this cooperative often enter into an inter-governmental agreement such as an agreement comprised of public and non-profit entities that operate Child Nutrition Programs. This group forms an agreement formed increase purchasing power. This agreement is **not** a method of procurement, rather an agreement to competitively procure goods and services together. Such agreements may include a fixed fee to cover overhead or administrative costs as specified in the cooperative agreement.

It is rare, but a few Child Nutrition Program State agencies conduct procurement on behalf of Child Nutrition Program operators. In such cases, Program operators may purchase from the Child Nutrition State agency procured sources without further competition as long as the State agencies procuring on behalf of Program operators followed procurement standards in Program regulations and 2 CFR 200.318-.326. If additional goods and services are needed but not available, the Program operator must conduct separate competitive procurement procedures using the applicable procurement methods in 2 CFR 200.320(a-d).

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Group Purchasing efforts identified
 - Agent
 - What is an agent?
 - What does a procurement agent do?



NOTE: The agency must be contractually required to conduct all procurements with the client's interest solely in mind.

SP05-2017; SFSP02-2017; CACFP03-2017



The second group purchasing effort is the services of an “agent”. You may ask, what is an agent and what does a procurement agent do? If you asked these questions, we’re glad you did. An agent is a person or business authorized to act on a client’s behalf and may be necessary for procuring goods or services when the client does not have the necessary technical understanding of the items or service to be purchased or lacks time or expertise to conduct a proper procurement. A procurement agent represents a special fiduciary relationship between itself and its client. In other words, the agent must be contractually required to conduct all procurements with its client’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 methods outlined in 2 CFR 200.320. Once an agent contract is executed, the agent must competitive procure all goods and services on behalf of the Program operator using Program and government-wide regulations.

Program operators are encouraged to consider if the agent services will be solicited for more than one year. When multiple year contracts are intended, the value of the agent services must be determined for the entire multi-year period and the appropriate procurement method must be used to procure the agent services.

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Procurement through third-party entities
 - State-run agreements
 - Inter-entity agreements (non-Program-operator-only cooperative agreements)
 - Group Purchasing Organizations, Buying Organizations, and Third-Party Vendors

SP05-2017; SFSP02-2017; CACFP03-2017



The last category, Third-party entities may be one of the largest group of purchasing efforts. Categorized as State-run agreements; Inter-entity agreements made up of non-Program operators and Group Purchasing Organizations, Group Buying Organizations and Third-Party Vendors. This is such a large category that we will look at each of these individually.

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Procurement through third-party entities
 - State-run agreements

SP05-2017; SFSP02-2017; CACFP03-2017



An example of the first group of third party services may be an agreement with a State procurement agency. This is an inter-governmental agreement with a State agency that is not the CN State agency which may allow public, private, and non-profit entities to procure from it's sources. The services are conducted by a State agency for State facility needs using State procurement standards and this agency **allows** local educational agencies (LEAs), school food authorities (SFAs), and other CNP operators to purchase from the State's contracted sources. When competitive procurement methods are conducted by the Child Nutrition Program operator, this agreement may be **one** source of prices when using small purchase procedures, sealed bids or competitive proposals, as applicable.

As State procurement regulations vary from State to State, many may not comply with Program and the government-wide regulations which is why they may be one source of prices. However, if States conduct procurements in compliance with Program and government-wide regulations, (Buy American, cost-reimbursable required contract provisions, use government-wide approved procurement methods and award a fixed-price or cost-reimbursable contract to the lowest responsive and responsible bidder/most advantageous proposal with price as the primary factor, and include required contract provisions in Appendix II to 2 CFR 200, etc.), the CN Program operator may be able to procure from these sources. The provisions stated are not all inclusive, so refer to Program policies and Program and government-wide regulations. The CN Program operator is responsible for ensuring the procurement complies with Program and government-wide regulations for goods and services specified.

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Procurement of third-party entities
 - Inter-entity agreements (non-Program-operator-only cooperative agreements)

SP05-2017; SFSP02-2017; CACFP03-2017



The next group of third-party entities are the groups with Inter-agency agreements made up of Program operators and non-Program operators.

ii. Inter-agency agreements. This is an agreement which may include public, private, and non-profit entities formed to procure goods and services together. An example may be an educational hub whose purpose is to purchase goods and services for LEAs. When competitive procurement methods are conducted by the Program operator, this agreement may be **one** source of prices when using small purchase procedures, sealed bids or competitive proposals, as applicable.

As these entities vary and may not comply with Program and the government-wide regulations, this is why they may be one source of prices. However, if these entities conduct procurements in compliance with Program and government-wide regulations, (Buy American, cost-reimbursable required contract provisions, use government-wide approved procurement methods and award a fixed-price or cost-reimbursable contract to the lowest responsive and responsible bidder/most advantageous proposal with price as the primary factor, and include required contract provisions in Appendix II to 2 CFR 200, etc.), the CN Program operator may be able to procure from these sources. The provisions stated are not all inclusive, so refer to Program policies and Program and government-wide regulations. When spending nonprofit food service account funds, the CN Program operator is responsible for ensuring the procurement complies with Program and government-wide regulations for goods and services specified.

Group Purchasing through Cooperatives and Third-party Entities

- Procurement of third-party entities
 - Group Purchasing Organizations, Buying Organizations, and Third-Party Vendors

SP05-2017; SFSP02-2017; CACFP03-2017



The last group in the third party entity group are what FNS refers to as Group Purchasing Organizations, Group Buying Organizations and Third-Party Vendors.

iii. Group Purchasing Organizations, Group Buying Organizations, and Third-Party Vendors. Collectively referred to here as Group Purchasing Organizations, this often includes Child Nutrition Program and non-Program operators such as public and private schools, hospitals, universities, law enforcement, public works, etc. who join a third-party company or service provider. Group Purchasing Organizations could be private, for-profit or nonprofit entities. A Group Purchasing Organization is typically structured in a way that may include a membership fee paid by member users, who are then granted access to the organization's price list of products and services. When competitive procurement methods are conducted by the Program operator, GPO price lists may be **one** source of prices when using small purchase procedures, sealed bids or competitive proposals, as applicable.

As these organizations vary from organization to organization, many do not comply with Program and the government-wide regulations which is why they may be one source of prices. However, if the organization conducts procurements in compliance with Program and government-wide regulations, (Buy American, cost-reimbursable required contract provisions, use government-wide approved procurement methods and award a fixed-price or cost-reimbursable contract to the lowest responsive and responsible bidder/most advantageous proposal with price as the primary factor, and include required contract provisions in Appendix II to 2 CFR 200, etc.), the CN Program operator may be able to procure from these sources. The provisions stated are not all inclusive, so refer to Program

policies and Program and government-wide regulations. The CN Program operator is responsible for ensuring the procurement complies with Program and government-wide regulations for goods and services specified.

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Summary of Group purchasing efforts identified:
 - Child Nutrition Program (CNP) Program operator-only and/or CNP State agency cooperative agreements
 - Agents
 - Third-party entities (State-run cooperative, inter-agency, non-Program operators such as public, private and non-Profit entities, group purchasing organizations, third party vendors)

SP05-2017; SFSP02-2017; CACFP03-2017



As previously discussed, let's summarize. Cooperative agreements and group purchasing procurement procedures are allowed by Federal procurement regulations as described in the previous slides. The guidance identifies 3 categories of the various efforts in group purchasing, Program operator-only cooperative agreements which involves only Child Nutrition Program operators including the Child Nutrition State agency, Agents, **and a third-party entities such as non-CN Program State-run cooperatives and non-CN Program State agencies, inter-agencies, non-Program operators such as public, private, and non-Profit entities, Group Purchasing organizations, etc.** The categories are broad and a number of models exist. This is why FNS categorized these groups for ease of identifying not only the groups that may be purchasing together, but how the procurement standards work for each of these. Let's look at the procurement methods.

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Procurement methods are found in 2 CFR 200.320
 - Micro-purchase
 - Small purchase procedures
 - Sealed bid/competitive proposals
 - Non-competitive proposals (when applicable)

SP02-2016; CACFP02-2016 and SP02.2016 ,
Questions and Answers on the Transition to and Implementation of
2 CFR Part 200, dated October 30, 2015

SP05-2017; SFSP02-2017; CACFP03-2017



Now that we have reviewed the 3 groups, let's identify the procurement methods **Program operators** must use to achieve full and open competition when procuring goods and services using the various group purchasing efforts. Noncompetitive proposals will not be discussed on this webinar as the use of this method is based on circumstances identified 2 CFR 200.320(f).

First of all, the required procurement methods are found in 2 CFR 200.320 and include micro purchases, small purchase procedures, and sealed bids/competitive proposals. These methods were detailed in SP02-2016; CACFP02-2016 and SP02.2016 entitled, *Questions and Answers on the Transition to and Implementation of 2 CFR Part 200*, published last year on October 30, 2015. Program operators are encouraged to reference this guidance or access 2 CFR 200.320 to find these methods. As a reminder of these methods, let's take another look.

1. Micro purchases: This method is may be used by Program operators or cooperatives to procure goods and services from qualified suppliers when:
 - The aggregate dollar value of the purchase transaction is less than the micro-purchase threshold (**currently set at \$3,500 however, the most restrict threshold applies when these exist in State or local requirements**)
 - Purchase prices are reasonably priced and
 - Transactions are equitably distributed among qualified suppliers. Qualified suppliers must include a variety of providers from which purchases are being equitably distributed as this is how full and open competition is accomplished using the micro-purchase method.

2. Small purchase procedures May be used when the:

- value of the purchase transaction is below the Simplified Acquisition Threshold (currently set at \$150,000 or the **most restrictive threshold which may exist under State or local procurement regulations**)
- documented price or rate quotes have been obtained from an adequate number of qualified sources. Although this must be more than one quote, it might include more than three sources when the population of qualified sources is large and diverse. For example, price lists from various sources may be used along with price quotes from other sources such as grocery stores, membership clubs, distributors, etc. Full and open competition is accomplished when more than one source is contacted to potentially supply products or services, price quotes are obtained and documented before making a purchase.

It is noted that various qualified sources may charge a membership fee in order to access price lists or may charge a fee when making purchases if a membership has not been purchased. Consideration of these membership fees is a component of the cost of products and services. Therefore, this cost should be considered when evaluating price or rate quotes obtained from qualified sources.

3. Sealed bids/competitive proposals: Often referred to collectively as formal procurement methods these are used when:

- the value of the purchase transaction will exceed \$150,000, **or the most restrictive threshold.**
- Solicited in accordance with the requirements of 2 CFR 200.320 and applicable Program regulations.

GPOs, along with non-GPOs (i.e., distributors and other qualified sources), may respond to a solicitation with prices for goods and services as specified in the solicitation. Responses are received and evaluated and those that fail to comply with specifications, required provisions, terms, and conditions as outlined in the solicitation are non-responsive and thus ineligible for contract award (see 2 CFR 200.320(c)).

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- What competitive process must be conducted by Program operators to be compliant with Federal procurement regulations when purchasing goods and services from each of these agreement types?
 - Procurements must be conducted in compliance with Program and government-wide regulations

7 CFR 210.21, 215.14(a), 220.16, 225.17, 226.22 2 CFR 200.318-.326



Now that we have quickly reviewed the various procurement methods, let's look at what competitive process must be conducted by Program operators to be compliant with Federal procurement regulations when purchasing goods and services from these agreement types?

Although the competitive process conducted by Program operators may vary according to the agreement type utilized, all competitive procurements must be in accordance with Program regulations and guidance and the government-wide regulations in 2 CFR Part 200.318-.326.

With all procurements, if a Program operator later determines additional goods and services are needed but not included or available from the sources already procured, the Program operator may purchase items using the micro-purchase method, if applicable, or conduct a separate procurement using the applicable procurement methods in 2 CFR 200.320(a-d) and maintain records detailing the history of the procurement as required in 2 CFR 200.318(i).

Remember, Program operators are not allowed to split purchases to avoid more formal procurement methods. ***See policy: find this***

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- CNP Program operator-only and/or CNP State agency cooperative agreement
 - Conducts procurement in compliance with Program and government-wide regulations

7 CFR 210.21, 215.14(a), 220.16, 225.17, 226.22 2 CFR 200.318-.326



CNP Program operator-only and/or State agency cooperative agreement. A cooperative that is comprised solely of Program operators and/or the CNP State agency may procure as a group and must do so in compliance with the procurement standards that apply to the individual Program operator (7 CFR 210.21 and 2 CFR 200.318-.326). This includes complying with all State and local procurement standards, if more restrictive, and publishing solicitations and contracts with all terms, conditions, required contract provisions, as applicable, and clearly identifies all product descriptions, specifications, and estimated quantities required. For SFAs, the Buy American and cost-reimbursable provisions in 7 CFR 210.21(d) and (f) are required. Further, each Program operator is responsible for monitoring contractor performance to ensure compliance with all contract provisions. Written agreements delineating roles and responsibilities are encouraged.

Examples of such cooperatives include:

Program Operator-only Cooperative: A group of Program operators agreeing to cooperatively procure together to take advantage of volume pricing for products or services procured in one contract. Under Program operator-only cooperative agreements, the group of Program operators, 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.

Educational Service Centers: 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. Again, such Program operator-only cooperatives must follow, at a minimum, Program and government-wide regulations when procuring goods and services for its members.

CNP State agency cooperative agreements: It is rare, but a few CNP State agencies conduct procurement procedures on behalf of Program operators. In such cases, Program operators may purchase from the CNP State agency's procured sources without further competition as long as the State agency procures on behalf of Program operators following procurement standards in Program regulations and 2 CFR 200.318-.326. State agencies must clearly define the scope of Program operators represented in the cooperative. Also, if Program operators determine additional goods and services are needed but were not procured by the cooperative or are not available from the procured source, the Program operator must conduct separate competitive procurement procedures using the applicable procurement methods in 2 CFR 200.320(a-d).

State agencies with oversight of the National School Lunch and Breakfast Programs have additional considerations as they must ensure SFAs include the Buy American provision in 7 CFR 210.21(d) in all solicitations and contracts for food and must ensure the contract provisions in 7 CFR 210.21(f) are included in cost- reimbursable contracts. The solicitation and contract must also outline how the allocable portion of each discount, rebate and or credit will be returned and/or disclosed to each participating SFA. The solicitation and contract must also outline how each proportionate value pass-through method for crediting the value of USDA foods will be returned and/or disclosed to each participating SFA.

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Agents
 - CN Program operator
 - Conducts procurement for agent in compliance with Program and government-wide regulations
 - Agent
 - Conducts procurement on behalf CN Program operator in compliance with Program and government-wide regulations

7 CFR 210.21, 215.14(a), 220.16, 225.17, 226.22 2 CFR 200.318-.326



When an agent is needed to procure goods and services on behalf of the Program operator, the Program operator must first determine if the agent fee is within the micro-purchase threshold or if a competitive procurement method must be conducted for the services of the agent. Program operators are encouraged to consider if the agent services will be solicited for more than one year. When multiple year contracts are intended, the value of the agent services must be determined for the entire multi-year period and the appropriate procurement method must be used to procure the agent services.

Regardless of the method of procurement, the scope of duties and 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. Fees cannot be a percentage of cost. Agents cannot be considered if they do not openly provide the full price for services provided. Paying a fee does not constitute a solicitation or contract with an agent. Program operators must include language that details "when procuring goods or services for their client, 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. Published solicitations and contracts must include all terms, conditions, required contract provisions, as applicable, and all products descriptions, specifications, and estimated quantities required. For SFAs, the Buy American and cost-reimbursable provisions in 7 CFR 210.21(d) & (f) are required. Further, each Program operator is responsible for monitoring contractor performance to ensure compliance with all contract provisions.

The procurement agent must confirm in its response to the solicitation that it will only represent the client and will have the client's best interests exclusively in mind when preparing solicitations for publication on the client's behalf. An agent may have multiple clients, of which a CN Program operator is one, when procuring on behalf of the Program operator, the agent must exclusively represent the client's best interests and not combine multiple clients in one procurement process. The agent may not have any conflict of interest, real or apparent. For example, the agent may not use pre-existing contractual relationships in lieu of conducting a competitive procurement on behalf of the Program operator.

In order to ensure free and open competition, the procurement agent must:

- work closely with the client to understand the client's needs,
- develop solicitations on the client's behalf consistent with 2 CFR Part 200.318-.326 and applicable Program regulations as required for the Program operators as noted above,
- 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, as specified by the Program operator, or State agency, as applicable, and,
- monitor the ensuing contract on behalf of the Program operator as required in 2 CFR 200.318(b), if specified in the original solicitation and resulting contract.

Please note that an agent publishing a solicitation on behalf of a client may not respond to such solicitation, as such would constitute an unfair advantage and be in violation of Federal procurement requirements as found in 2 CFR 200.319(a).

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Is there an advantage to soliciting prices from qualified sources versus using a procurement agent?
 - When qualified sources or personnel are limited and/or
 - When the Program operator:
 - Lacks the time or expertise to evaluate needs, write specifications, draft solicitations, evaluate and award contracts, and obtain competitive prices using compliant procurement methods



Is there an advantage to soliciting prices from qualified sources versus using a procurement agent?

The services of an agent may be beneficial in places where qualified sources or personnel are limited and/or when the Program operator lacks the time or expertise to evaluate needs, write specifications, draft solicitations, evaluate and award contracts, and obtain competitive prices using compliant procurement methods. As noted above, agents may not respond to solicitations drafted on behalf of the Program operator as this would be a conflict of interest and a violation of Federal regulations.

Program operators are encouraged to consider their procurement procedures and to determine if the use of a procurement agent is the best approach when considering the availability of qualified sources, time, expertise, and the agent's fee(s).

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Third-Party entities
 - Non-CNP State agency agreements

7 CFR 210.21, 215.14(a), 220.16, 225.17, 226.22 2 CFR 200.318-.326



As noted earlier, Program operators must also follow procurement procedures consistent with 2 CFR Part 200.318-.326 and applicable Program regulations when procuring under agreements with third-party entities. Additionally, agreements that include a fee to cover overhead or administrative costs must be specified therein.

Let's look at State procurement agency agreements. For clarification here, we are talking about non-Child Nutrition Program State agency agreements. The Program operator may consider a non-CNP State agency's procurement as **one** source of prices when conducting a compliant procurement procedure. For example, if the purchase is under \$3,500, the Program operator may purchase directly from the State's procured sources as long as the prices are reasonable and the Program operator equitably distributes all procurements among all qualified suppliers available. If the procurement is less than the Federal Simplified Acquisition Threshold (SAT), (currently set at \$150,000, or State or local threshold whichever is most restrictive) the Program operator may obtain a price or rate quotation from the State's procured sources, among other qualified sources available. For procurements over the Simplified Acquisition Threshold, a Program operator must first conduct a cost analysis (2 CFR 200.323(a)) then develop a solicitation (sealed bid or competitive proposal) and may use vendors and prices from the State's contract as **one** source. Remember, it is not the State procurement agency agreement that is the competitive procurement; rather, this agreement gives the Program operator further options of sources to utilize when conducting a compliant competitive procurement procedure to ensure full and open competition.

However, if the Program operator determines these entities conduct procurements in compliance with Program and government-wide regulations, the CN Program operator may be able to procure from these sources without further competition. It is the CN Program operators responsibility to ensure all procurements comply with Program and government-wide regulations for goods and services specified when paying for goods and services using the nonprofit food service account.

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Third-Party Entities.
 - Inter-agency agreements

7 CFR 210.21, 215.14(a), 220.16, 225.17, 226.22 2 CFR 200.318-.326



Let's look now at the procurement requirements using Inter-agency agreements. Program operators purchasing through an inter-agency agreement includes entering into the inter-agency agreement to competitively procure common goods and services, **then developing and publishing** solicitations through sealed bids/competitive proposals. These solicitations must include procurement procedures consistent with Program and government-wide regulations. The solicitation must include the terms, conditions, required contract provisions, as applicable, and all products, descriptions, specifications, and estimated quantities for their Child Nutrition Programs. For SFAs, the Buy American and cost-reimbursable provisions are required. Further, each Program operator is responsible for monitoring contractor performance to ensure compliance with all contract provisions. An example of an inter-agency agreement is an educational hub whose purpose is to competitively procure goods and services for LEAs.

Buy American - 7 CFR 210.21(d) & required contract provisions for cost-reimbursable contracts (f)

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- Third- Party entities
 - Group Purchasing Organizations, Buying Organizations, and Third-Party Vendors.

7 CFR 210.21, 215.14(a), 220.16, 225.17, 226.22 2 CFR 200.318-.326



Third- Party entities: Group Purchasing Organizations, Buying Organizations, and Third-Party Vendors.

The business model of a GPO may include a variety of services of which facilitating procurement for members/member agencies and procuring products and services from an external source such as an affiliated or unaffiliated full-line distributor are included. Membership may, or may not, involve paying a fee in addition to the price of products and services purchased. However, paying a fee does not constitute compliance with the competitive procurement process that Program operators are required to conduct when procuring products and services. A Program operator may pay a membership fee to multiple GPOs and when using micro or small purchase procedures may consider the price for products from GPOs as **one source** among an adequate number of qualified sources. For the procurement of good and services greater than the Federal SAT or State or local thresholds that may be more restrictive, Program operators must publish sealed bids or competitive proposals to which GPOs may respond provided the GPO has not drafted such solicitations. Likewise, responses to bids/proposals must be evaluated by the Program operator 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 the micro-purchase threshold. Under the micro-purchase threshold, transactions are below \$3,500 **or most restrict threshold that may exist in States or local jurisdictions**, prices would be reasonable, and purchases would be equitably distributed among qualified suppliers.

Group Purchasing through Cooperatives, Agents, and Third-party Entities

- When adding parties to an existing contract, what considerations must be included in solicitations and contracts to allow this practice?

7 CFR 210.21, 215.14(a), 220.16, 225.17, 226.22 2 CFR 200.318-.326



FNS often receives requests about adding parties to contracts. When adding parties to either a fixed-price or cost-reimbursable contract, known colloquially as “piggybacking,” the contract must have been procured in compliance with 2 CFR Part 200.318-.326 and applicable program regulations. 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.

For a contract containing such provisions, language should be **included specifying applicable limitations of the extension of the piggybacking**. Such information as the dollar value/volume or the number of additional parties that may be added is essential for potential contractors to know the potential scope of the contract. Likewise, all bidders/responders must know without question at what point the contract has reached its specified limit and a new competitive solicitation process is required.

As with all cooperative purchasing efforts, such contracts should be thoroughly reviewed by members to ensure the contract meet their needs and conforms to all applicable program and government-wide requirements. For further guidance on “piggybacking” refer to memo SP 02-2016; CACFP 02-2016; SFSP 02-2016. Questions and Answers on the Transition to and Implementation of 2 CFR Part 200, dated October 30, 2015.

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; see

Q5 in the policy for further information on adding parties to an existing contract.

Questions

- We will now review the questions submitted and seek to answer these.
 - Please give us about 3 minutes for this review.

7 CFR 210.21, 215.14(a), 220.16, 225.17, 226.22 2 CFR 200.318-.326



This ends our presentation on the Group purchasing efforts guidance published on Oct. 20, 2016. Please give us a about 3 minutes to this review the questions that we have not yet answered. We have answered many questions as we were presenting. We will review many of these and provide these answers to all.

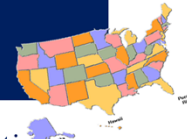
And let me remind all of you that upon completion of this question and answer session, we will have a short presentation for schools on the Buy American Provision and guidance. All are welcome to participate, but we especially invite State agencies and schools overseeing and operating the National School Lunch Program to stay with us.



The second half of this presentation will be on the Buy American provision. This section will focus on this very important provision in the National School Lunch Program and while this section does NOT apply to Sponsors that only operate the Child and Adult Care and the Summer Food Service Program ONLY, this section does apply to these program when schools operate them. So Child and Adult Care Program and Summer Food Service Program Sponsors that ONLY operate these programs, we understand if you choose not to continue with this webinar. This is why we addressed questions on the Group Purchasing portion of the webinar.

Let's begin with this section of the presentation. To discuss the Buy American provision, we will use a couple of materials that have been published. The most recent published guidance is memo SP 24-2016 entitled, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program, dated February 3, 2016. This most recent guidance updated previous guidance published in 2009 and 2012 and expanded the guidance as we will share in the remaining portion of the webinar.

Buy American: National School Lunch Program



Authority: Section 104(d) -William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added Section 12(n) to the NSLA (42 USC 1760(n)),

- Requires SFAs to purchase, to the maximum extent practicable, domestic commodity or product.
- Defines “domestic commodity/product” as an agricultural commodity **produced** in, food product **processed** in, and **processed** using substantial agricultural commodities **produced in the U.S.**
 - The Buy American provision (**7 CFR Part 210.21(d)**)

SP-24-2016, Compliance with and Enforcement of the Buy American Provision



The recent guidance includes the **authority** from Congress to require Schools to comply with the purchase of American products. This is NOT new, but we will share this for those who may be new this year, or in recent years, and not be familiar with this authority.

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 commodities or products. 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.

That’s multiple references to products being produced and processed in the United States so we hope you understand this importance. Additionally, “Substantial” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. The Buy American provision, codified in 7 CFR Part 210.21(d), is one of the procurement standards SFAs must comply with when purchasing commercial food products served in the Program meals.

Buy American: National School Lunch Program



Authority:

- Additions to domestic includes products of:
 - Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands as allowed
 - These are territories of the U.S.

SP-24-2016, Compliance with and Enforcement of the Buy American Provision



FNS published numerous policy guidance between 2006 and 2012 reminding SFAs of the requirement to purchase domestic foods. Likewise during the three nationwide procurement trainings for State agencies in 2015, FNS again identified that issues with school purchasing non-domestic foods were being identified. Therefore, the importance of compliance with the Buy American provision was presented. Then, in February, 2016, FNS issued the new policy guidance on Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program. In this policy, FNS included the addition of food products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands as allowed purchases under this provision as these countries are territories of the United States.

Buy American in the National School Lunch Program



Compliance with the Buy American provision.

- Supports the mission of the Child Nutrition Programs:
 - Serve children nutritious meals
 - Support American agriculture
- Requires that funds from the nonprofit food service account used for purchases must comply with procurement standards including the Buy American provision. This means:
 - “ONLY 100% domestically grown and processed products”
 - whether food products are purchased by SFAs/entities purchasing on their behalf.



Why is this provision so important? Compliance with the Buy American provision supports the mission of the Child Nutrition Programs. This mission is two-fold: to serve children nutritious meals **and** support American agriculture. State agencies and SFAs are reminded that when funds are used to purchase food using the nonprofit food service account, procurement transactions for these food must be domestic. That’s produced and processed in the United States. To comply with the Buy American provision, if schools struggle with what to include in their solicitation documents to ensure their food purchases comply, use “ONLY 100% domestically grown, produced, and processed.” This applies whether food products are purchased by SFAs or entities that purchase on their behalf.

Buy American in the National School Lunch Program

- Entities purchasing on behalf of SFAs include:
 - Food service management companies, group purchasing organizations, cooperatives of schools, 3rd party agents, inter-governmental or inter-entity agreement, etc.
 - If SFAs have difficulty ensuring that food products meet this regulation, FNS encourages a provision and in food specifications be included in solicitations and contracts
 - 100 % domestic foods only



SP-24-2016, Compliance with and Enforcement of the Buy American Provision



Some examples of entities purchasing on behalf of school food authorities include: food service management companies, group purchasing organizations, or cooperatives of schools, intergovernmental or inter-entity agreement, etc. Do you catch the connection of why we tagged the group purchasing webinar with this section on Buy American? Again, if school food authorities have difficulty ensuring that food products meet this regulation, FNS asks schools to check their procurement solicitation documents to be sure the Buy American provision, food specifications or other places in the documents includes language that only 100% domestically grown and processed products are approved for purchase. We hope you have checked this already.

Buy American in the National School Lunch Program



The Buy American provision supports local and small businesses.

- Purchasing food from local sources:
 - Supports small local farmers
 - Provides healthy choices for children
 - Supports the local economy.
 - Encourages working with local, or small, minority, and women-owned businesses. (2 CFR 200.321)

SP-24-2016, Compliance with and Enforcement of the Buy American Provision



Did you know that the Buy American provision could help support local and small businesses? Using food products from local sources supports small local farmers and provides healthy choices for children in the Program meals. Purchasing from these entities also supports the local economy. Compliance with the Buy American provision may also encourage school food authorities to work with local, or small, minority, and women-owned businesses. And if you have not realized it before now, 2 CFR 200.321 requires Program operators to take affirmative steps to incorporate small, minority and women-owned businesses, when possible. So this effort provides another opportunity to comply with another Federal regulation and support the local economy all in one!