Module 5: Key Points

After completing this module, you will:

- ⇒ Understand what procurement means.
- ⇒ Know the purpose of procurement standards.
- ⇒ Be able to distinguish between federal, state and local requirements.
- ⇒ Understand "code of conduct."
- ⇒ Know the competition requirements.
- ⇒ Understand the importance of a cost-and-price analysis.
- ⇒ Be able to identify a responsible contractor.
- ⇒ Allow for geographic preference on unprocessed agricultural products only.
- ⇒ Know about the "Buy American" requirement.
- ⇒ Know about acceptable methods of purchasing.
- ⇒ Realize that potential vendors are prohibited from developing specifications.
- ⇒ Know what is required to manage the contractual process.
- ⇒ Understand how to maintain good procurement records.
- ⇒ Be able to keep account funds in the required "nonprofit" status.
- ⇒ Be able to find the website for information on all procurement issues.

Module 5: Tasks

You should complete the following tasks in Module 5:

- \Rightarrow Read the lesson
- ⇒ Read the lesson Summary
- \Rightarrow Do the Activity
- ⇒ Take the Self-Quiz
- ⇒ Review the Web sites and resources related to Module 5

Module 5: Target Audience

This module should be reviewed by the child nutrition director (or designee) and any staff involved in the purchase of goods and services related to NSLP and SBP.

Module 5: Estimated Time Required

Approximately 1 hour



Procurement Overview

Definition: Procurement is the process of acquiring goods or services by purchase, barter, exchange or lease. For purposes of this summary, the word "purchase" is synonymous with procurement.

Requirement: All local entities receiving funds for a program or activity (such as the NSLP and SBP) must follow federal procurement standards as prescribed in 7 CFR Part 3016 (for public local and state agencies) and 7 CFR part 3019 (for nonprofit local education agencies) unless state or local laws are more restrictive, in which case they must be followed.



Purpose: The underlying foundation of all procurement is that it must be conducted in a manner that provides **maximum free and open competition.**

Objective:

The reasons for the federal regulations on purchasing include:

- ⇒ Securing the best quality product or service at the lowest price for the school's planned needs.
- ⇒ Encouraging competition between as many potential suppliers of food service products as possible.
- ⇒ Clearly defining the school district's responsibilities and rights, remedies or resources under a contract for purchase of products and services.
- ⇒ Enabling the school to show and document wise use of public funds.
- ⇒ Making the food service manager's job more productive.

Food Service Purchasing Plan

A School Food Authority's complete plan should include the following steps:

- 1) Identify the needs for food and nonfood products and services.
- 2) Equitably communicate needs to and request offers from potential suppliers.
- 3) Evaluate products and services offered by suppliers.
- 4) Manage the contractual process.
- 5) Maintain good records.

Identify the Needs for Food and Nonfood Products and Services



- ⇒ Federal purchasing procedures require schools to have a system in place that avoids purchasing unneeded food items or duplicating food already in inventory.
- ⇒ A cost and price evaluation must be conducted for every procurement, although the extent of the evaluation will depend on the procurement method used.
- ⇒ SFAs must develop their own specifications for a product or service (rather than relying upon the specifications from potential contractors) in order to assure fair competition

for awards. Although you can use specifications developed by another school, make sure the specifications match exactly what you want in your procurement.

- After the product and service needs of the school have been outlined and clearly described, potential suppliers can be identified.
- ⇒ Having provisions that unduly restrict competition (such as limiting purchases to a certain brand or vendor or awarding contracts to potential contractors that drafted procurement documents) is prohibited.
- ⇒ Imposing in-state or local geographical preferences is prohibited. The "Farm Bill" allows for in-state or local geographic preferences when purchasing unprocessed agricultural products.
- ⇒ Small/minority-owned businesses must be given special consideration.
- Schools must have a **code of conduct** that prohibits school employees from soliciting or accepting gratuities, favors, or anything of monetary value from suppliers or potential suppliers. The code of conduct should prescribe appropriate sanctions, penalties and/or actions for violations by school personnel and/or suppliers.
- ⇒ "Buy American" provisions require SFAs to purchase, to the maximum extent possible, domestic commodities or products. The only exceptions to this provision are if (1) the product is not manufactured in the U.S. in sufficient quantity or quality or (2) the cost of the U.S. product is significantly higher than the foreign product.

Communication of Needs to and Requests for Offers From Potential Suppliers

- ⇒ Federal regulations allow four methods of purchasing: small purchase procedures, competitive sealed bids (Invitation to Bid), competitive negotiation (Requests for Proposals) and noncompetitive negotiation (rarely used).
- Regardless of which method is used, the school should avoid all provisions that might restrict competition or result in the school paying higher prices because only one or a limited number of vendors can supply the needed product or service.



Evaluate Products and Services Offered by Suppliers in Response to Request(s)

⇒ Good school/vendor relations depend on **responsible** bidders submitting offers that are **responsive** to the school's requests and the school's fair and objective evaluation of those offers.

Manage the Contractual Process

- After all responses to offers have been evaluated, the school food authority should award a contract to the selected supplier(s) in accordance with local administrative procedures.
- The SFA must have a procedure for receiving deliveries that assures the supplier is complying with all terms of the contract. All irregularities should be reported to the person responsible for purchasing who can pursue appropriate remedies with the supplier. Training staff on how to inspect deliveries and how to complete receiving logs will be included in



your HACCP plan and covered in Module 3: Meal Planning.
Price adjustments (e.g., fuel surcharges) are permitted only when the initial solicitation and contract allow for it. Make sure to tie price adjustments to an appropriate index so potential increases are not arbitrary.

Maintain Good Records

All School Food Authorities must maintain good records that detail procurement history, including (1) justification for procurement method, (2) selection criteria for bidders, (3) basis for award determination/rejection, and (4) any modifications made to the contract.

Financial Management

- All funds deposited into the School Food Authority account are considered revenues, including federal reimbursements, student payments, and state or locally provided funds.
- Revenues may only be used for the operation or improvement of food service.
- Revenues and expenditures from the School Food Authority account are subject to federal, state, and local procurement requirements.
- The net cash resources of a food service operation must be limited to an amount consistent with program needs. At least once during each fiscal year, the USOE will review the net cash resources reported for schools and require an explanation of the need for balances amounting to more than three months' operating costs.

Who to Contact for Answers Regarding Procurement



- ⇒ For in-depth information regarding procurement protocol for state agencies, visit www.purchasing.utah.gov.
- ⇒ For specific questions on procurement, please consult your procurement office and/or business administrator.

Summary

- ⇒ All School Food Authorities receiving funds as part of the NSLP or SBP must follow federal procurement standards unless state or local laws are more restrictive, in which case the latter must be followed.
- ⇒ The underlying foundation of all procurement is that it must be conducted in a manner that provides **maximum free and open competition.**
- Your **food service purchasing plan** should include (1) identifying the needs for food and nonfood products and services, (2) equitably communicating to and requesting offers from all potential suppliers for the needed products and services, (3) evaluating products and services offered by suppliers, (4) managing the contractual process, and (5) maintaining good records.
- ⇒ Schools must have a **code of conduct** (with appropriate actions for violations) that prohibits school employees from soliciting or accepting gratuities, favors, or anything of monetary value from suppliers or potential suppliers.
- ⇒ School Food Authorities are **prohibited** from having provisions, such as limiting purchases to a certain brand or only choosing local vendors, that unneccessarily restricts free and open competition.
- ⇒ The "Buy American" requirement requires sponsors participating in the NSLP to purchase, to the maximum extent possible, domestic commodities or products.
- ⇒ Federal regulations allow four **methods of purchasing**: small purchase procedures, competitive sealed bids (ITB), competitive negotiation (RFP), and noncompetitive negotiation (rarely used).
- ⇒ Bids should be awarded only to **responsible contractors** who closely follow terms and specifications of agreement.
- ⇒ All SFAs must **maintain good records** that detail procurement history.



Activity

Review a Pretend School District's Procurement Plan found in First Choice: A Purchasing Systems Manual for School Food Service, 2nd Edition, NFSMI, which can be found here. Link



- 1) If your school or district already has a purchasing plan, discuss with relevant staff what changes or additions might be made to your present plan.
- 2) If your school or district does not have a purchasing plan, outline who should be involved in writing up the plan and a time line for completing a plan.

Self-Quiz (Answers on pages 9-10)

1)	The underlying foundation of all procurement is that it must be conducted in a manner that provides
2)	In your own words, describe the five parts of a food service purchasing plan.
	Identify the needs for food and nonfood products and services:
	Equitably communicate needs to and request offers from all potential suppliers:
	Evaluate products and services offered by suppliers:
	Manage the contractual process:
	Maintain good records.

(Self-Quiz continued on next page)

(Self-Quiz continued from preceding page)

- 3) True or False: Small purchases don't need to follow procurement regulations.
- 4) True or False: Schools can order fresh fruits and vegetables from any vendor they want because state procurement law allow perishable items to be purchased without competition.
- 5) True or False: Schools can never use an in-state or local geographic preference.
- 6) True or False: It's okay to enter into a sole-source contract when you want a particular product or the vendor certifies that it is the only one that offers a particular product.
- 7) True or False: It's okay to use specifications developed by another school in your procurement.
- 8) True or False: It's okay to use specifications developed by a potential vendor.
- 9) True or False: If I have a question, the first thing I should do is call the USOE Child Nutrition Programs.



Resources



⇒ First Choice: A Purchasing Systems Manual for School Food Service, 2nd Edition, NFSMI:

http://nfsmi-web01.nfsmi.olemiss.edu/ResourceOverview.aspx?ID=64

The Code of Federal Regulations (CFR) for 3016 and 3019:

www.access.gpo.gov/nara/cfr/waisidx_01/7cfr3016_01.html www.access.gpo.gov/nara/cfr/waisidx_01/7cfr3019_01.html

Several procurement rules (including the requirement to "Buy American" and purchase locally produced foods when possible) that must be followed in addition to the CFRs:

http://www.fns.usda.gov/cnd/Governance/regulations/7cfr210_09.pdf

Self-Quiz Answers

- 1) The underlying foundation of all procurement is that it must be conducted in a manner that provides maximum free and open competition.
- 2) In your own words, describe the five parts of a food service purchasing plan.

Identify the needs for food and nonfood products and services:

First, you must outline what your school meal program needs and how much you expect to pay. Then you must write up your specifications, making sure that you follow federal, state, and local regulations (including following the more restrictive regulation if there are any conflicts). These regulations include having no local or in-state preference for a vendor; making sure that no one involved in the procurement process receives any gift or favors from a potential vendor; and, to the maximum extent possible, purchasing domestic products ("buy American") and making sure to include small and minority-owned businesses on the potential bidders' list.

Equitably communicate needs to and request offers from all potential suppliers:

Next, you must notify potential vendors of your request via one of four methods:

- (1) small purchase procedure, (2) Invitation to Bid (3) Request for Proposal and
- (4) noncompetitive negotiation procedure (which is rarely used).

Evaluate products and services offered by suppliers:

When choosing who to award the contract to, it is important to look for bidders who have a solid reputation and who meet your needs

Manage the contractual process:

After the contract has been awarded to a specific vendor, it is important that the SFA makes certain that the vendor is meeting all the requirements outlined in the agreement.

Maintain good records.

The SFA must keep records of every procurement, including which method was used to notify potential suppliers of request, what were the needs listed on the request, what were the reasons for awarding the contract to a specific supplier, and whether there were any changes made to the contract after the procurement agreement was made.

(Self-Quiz Answers continued on next page)

(Self-Quiz Answers continued from preceding page)

- 3) True or <u>False</u>: Small purchases don't need to follow procurement regulations. The small purchase threshold merely simplif es the *process* it is not an exemption from competition requirements and other regulations.
- 4) True or <u>False</u>: Schools can order fresh fruits and vegetables from any vendor they want because State procurement law allow perishable items to be purchased without competition.

Schools must follow a combination of local, state, and federal requirements. When there is a conflict *the more restrictive requirement applies*. Federal regulations require "full and open" competition for *all* procurements, so that overrides state law.

- 5) True or <u>False</u>: Schools can never use an in-state or local geographic preference. In-state and local geographic preferences are permitted for unprocessed agricultural products only. Geographical preference is prohibited for any other purchases.
- 6) True or <u>False</u>: It's okay to enter into a sole-source (non-competitive) contract when you want a particular product or the vendor certifies that it is the only one that offers a particular product.

Non-competitive contracts can only occur when other procurement methods are unfeasible and when there are extenuating circumstances. Simply wanting a particular product or having a vendor certify that no one else has it does not meet these requirements.

7) <u>True</u> or False: It's okay to use specifications developed by another school in your procurement.

But make sure the specif cations outline what you want!

8) True or <u>False</u>: It's okay to use specif cations developed by a potential vendor.

SFAs must develop their own specifications (rather than relying upon the specifications from one potential contractor) in order to assure fair competition for awards.

9) True or <u>False</u>: If I have a question, the f rst thing I should do is call the USOE Child Nutrition Programs.

Your procurement off ce and/or business administrator should be the first people you call.

