**Cooperatives - Intergovernmental Contracting - Piggybacking**

When the School Food Authority (SFA) contracts with a Cooperative, the SFA must be cautious of any Cooperative purchasing contracts and confirm the contracts are not just using Cooperatives approved vendor lists!

To determine whether a Cooperative purchasing agreement was procured using “full and open competition,” ask the Cooperative the following five questions:

1. Were the procurement solicitations advertised in a relevant publication?
2. Did the solicitation document contain specific descriptions of items to be purchased?
3. Did the solicitation document contain renewal terms and other required contracting terms?
4. Did the solicitation document contain specific criteria for awarding the contract?
5. Did the procurement utilize appropriate comparative evaluation process for choosing vendors?

**School Cooperative Contracts**

The school food service department may also use the Cooperative contracts listed below. When goods or services are requested through a Cooperative contract, the contract number must be referenced on the requisition. Cooperatives approved for use by the school food service department are:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

When placing an order using a Cooperative contract, make sure the items you are ordering are included in the Cooperative contract. If they are not, quotes must be obtained for non-included items.

(NOTE: All purchases, whether done independently or through a Cooperative contract must be done in accordance with school food service department procurement rules.)

**\*A School Cooperative is a type of Buying Group\***

A buying group is the coming together of organizations such as schools that share a common goal and interests, leverage their combined purchasing power, and sharing of core competencies and spreading out the administrative burden of managing multiple and sometime large complex awarded contracts. Buying groups also bring market efficiencies to regional supply chains by reducing the number of different product lines needed to compete in that region.

**Importance of Competition**

Competition is an essential element of any procurement. Competition is the goal of all federal and state procurement requirements because competition will lead to the acquisition of higher-quality goods and services at the lowest possible price. All federal and state procurement requirements exist to achieve this goal by fostering a competitive procurement environment.

The preceding requirements apply when the school food service department seeks the services of an entity such as a School Purchasing Association, Cooperative (co-op), Government Purchasing Organization (GPO) or State Sponsored Cooperatives, and Group Purchasing Organization (GPO), or any entity offering to facilitate access to those types of entities. This applies even if the services are offered at no charge.

**Types of Buying Groups**

When planning to join a buying group the school food service department needs to consider the type of buying group it would like to participate in. Federal and state procurement requirements may vary from one type of buying group to another.

When considering participation in a buying group, the school food service department needs to first determine if the buying group consists of only schools, governmental organizations, and/or non-governmental organizations. Federal and state procurement regulations are always required, but depending on the makeup of the buying group, federal and state procurement regulations will apply differently.

The following are a list of some but not all types of buying groups with corresponding descriptions and procurement requirements:

1. **School Purchasing Association** - this type of buying group is an informal association of schools, governmental organizations, and/or non-governmental organizations that have come together to purchase products or services collectively. After the purchase, the contract is normally held independently of each participant and the supplier, distributor, or vendor. This is different from a co-op or GPO contract with a supplier, distributor, or vendor, with a these types of buying groups, the contract is helped by the buying group and the supplier, distributor, or vendor and not by its members. The school food service department will need to review the procurement of this type of buying group to make sure it complies with Federal and State procurement regulations.
2. **School Cooperative (co-op) -** this type of buying group is an autonomous association of organizations that voluntarily co-operate in purchasing practices and sharing of resources for their mutual economic benefit. Conducting a competitive procurement is not required if the school food service department elects to participate in a Cooperative comprised solely of other schools who joined together to increase purchasing power. The school food service department will not need to undertake the procurement process because the co-op is designed to act on its own behalf which is a collective of other schools. A co-op will need to comply with Federal and State procurement regulations when procuring goods and services for its members.

A school co-op comprised solely of schools procuring as a collective group of schools must procure in the same manner as the school food service department. The school food service department will need to confirm the co-op is comprised solely of schools that act on their own behalf and the co-op is following all required Federal and State procurement regulations. The school food service department will need to review procurement requirements of the co-op to make sure it complies with federal and state procurement regulations.

If the school food service department determines the co-op contains a third party member which is not a school or governmental organization, the school food service department may join the co-op but all purchase through the co-op would require the school food service department to conduct a competitive procurement for those purchases.

1. **Government Purchasing Organization (GPO)** or **State Sponsored Cooperatives** - this type of buying group is created to leverage the purchasing power of a group of schools and possibly other governmental organizations. This type of buying group may obtain additional volume discounts from manufactures, suppliers, distributors, and vendors. This type of buying group is normally funded by a combination of federal or state funding and membership fees. These fees may be paid directly to the buying group, from manufactures, suppliers, distributors, and vendors contracted by the buying group; or they may be paid directly to the buying group, by its members.

*Cooperative Educational Service Agency (CESA)*is a state sponsored co-op which was formed for the benefit of schools located in Wisconsin and is divided into 12 districts. CESA is granted its authority from Wisconsin Statute Chapter 116. As such, the school food service department can elect to become a member of CESA without the needing to competitively procure membership or goods and services purchased through CESA. Schools and the State of Wisconsin contribute funds to the administration of the CESA. All profits including rebates, discounts, and credits are accounted for in the administration of CESA and accrue for the benefit of schools who are members.

The school food service department does not have to competitively procure membership in this type of buying group.

The school food service department will need to review procurement requirements of the buying group to make sure it complies with federal and state procurement regulations.

If the buying group contains a third party member that is not a school or governmental organization, the school food service department may join the buying group, but all purchase through the buying group would require the school food service department to conduct a competitive procurement for those purchases.

1. **Group Purchasing Organization (GPO)** - this type of buying group is an entity which is created to leverage the purchasing power of a group of public/private organizations and government/non-government organizations including schools. A GPO may obtain additional volume discounts from manufactures, suppliers, distributors, and vendors. GPOs are normally funded by administrative fees. These fees may be paid directly to the GPO, from manufactures, suppliers, distributors, and/or vendors contracted by the GPO; or they may be paid directly to the GPO, by its members.

The school food service department will not have to competitively procure membership in this type of buying group if membership fees are negligible.

A purchase through this type of buying group would require the school food service department to conduct a competitive procurement for that purchase.

**Summary of Buying Groups**

| **Type of Buying Group** | **Ownership** | **Buying Group Members** | **Procurement** |
| --- | --- | --- | --- |
| School Purchasing Association | None | N/A - No membership required | Yes – the school food service department will need to review procurement to make sure it complies with federal and state procurement regulations. |
| Cooperative (co-op) | Co-op | Only Schools | Purchases from co-op do not need to be competitively procured.  The school food service department will need to review procurement requirements of the co-op to make sure it complies with Federal and State procurement regulations. |
| Cooperative (co-op) | Co-op | Schools and other government organizations | Purchases from co-op do not need to be competitively procured.  The school food service department will need to review procurement requirements of the co-op to make sure it complies with federal and state procurement regulations. |
| Cooperative (co-op) | Co-op | Schools and other non-schools/non-government organizations | Purchases from co-op will need to be competitively procured. |
| Government Purchasing Organization (GPO)  Or  State Sponsored Cooperatives | Government Organization | Schools and other government organizations | Purchases from GPO do not need to be competitively procured.  The school food service department will need to review procurement requirements of the GPO to make sure it complies with federal and state procurement regulations. |
| Group Purchasing Organization (GPO) | GPO | Schools and other non-schools/non-government organizations | Purchases from GPO will need to be competitively procured. |

**Procurement Fees**

If the school food service department contracts with contractors for purchasing goods and supplies for use in the food service operation. All discounts, rebates, and applicable credits received by the contractor when purchasing goods on behalf of the school must be returned to the school’s nonprofit school food services account.

Any fee charged to the school food service department which correlates to the amount of discounts, rebates, and applicable credits that the contractor is required to return to the school food service department is an unallowable cost and undermines the intent of the federal and state regulations referenced above.

A fee structured in this way is clearly intended to return some or all of the discounts, rebates, and applicable credits to the company with whom the school food service department has contracted for services rather than to ensure they accrue to the school food service department nonprofit school food service account.

Some examples of fees which are unallowable and directly tied to the amount of discounts, rebates, and applicable credits could include the following:

* A contractor purchases a food product from a distributor on behalf of a school. The distributor offers a 10 percent discount on the cost of the product. The contractor charges the school a 10 percent procurement fee for the service of purchasing the food product. (This practice also violates the cost-plus-a-percentage-of-cost contract prohibition in Title 7, Code of Federal Regulations, Section 3016.36[f][4]).
* A contractor purchases a food product from a distributor on behalf of a school at a cost of $1 per item. The distributor offers a 10-cent-per-item rebate, which the contractor passes along to the school. The contractor then charges the school a 10-cent procurement fee per item purchased from this distributor vendor.

These fees are unallowable charges to the school’s nonprofit food service account.

The school food service department may, however, develop solicitations in a way that allows for management and/or administrative fees which include fees for procurement services. The procurement fee could be a separate fee or part of another contract fee, as long as it remains fixed.

The USDA required all contracts to comply with all aspects of the final rule by November 2009, including procurement fee limitations. (See memo: Allowability of Procurement Fees in SFA Contracts (SP 15-2008) (March 12, 2008))

**Intergovernmental Co-operation and Piggybacking**

While intergovernmental agreements can benefit the school food service department, the school food service department may only enter into an intergovernmental agreement with a state agency or local government agency which allows the schools to join or piggyback onto a state agency or local governmental entity when that agreement was procured and awarded consistent with federal and state procurement regulations.

The school food service department will need to carefully review of the solicitation issued by the state agencies or governmental agency. The school must ensure compliance with applicable Federal and State procurement regulations. The school will confirm the addition of their purchasing power to the procurement in scope or in services does not create a material change.

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 school. Consequently, a state agencies or local governmental entity may have to rebid at the next juncture because of these material change issues.

**Steps used for Piggybacking**

If it appears there may be an existing governmental contract which may be used for a specific need, the school food service department will first want to obtain a copy of the entire contract and review it carefully to determine if it contains the provisions required. This is an important first step, because of federal and state regulatory requirements which apply to procurements made through intergovernmental contracts and assignments. If the contract lacks required provisions, you may be able to have it modified by the awarding agency to include the necessary Federal and State requirements. Among the steps you may want to take are the following:

1. Determine the contract is still in effect or can be modified by the awarding agency to permit sufficient lead time to make the required deliveries to the school food service department.
2. Determine the specifications in the existing contract will meet your needs.
3. Review the terms and conditions carefully to determine they are acceptable to you; e.g., warranty provisions, insurance requirements, etc.
4. Determine which of the requirements needed by your school food service department will not be beyond the scope of the awarded contract.
5. Determine if the contract was awarded competitively, either through sealed bids or competitive proposals.
6. You are not required to do a second price analysis if one was originally performed. However, you must determine the contract prices originally established are still fair and reasonable. Circumstances should dictate the steps to be taken. For example, if the original award was made some time ago, you may want to do a market survey and/or perform price analysis to ensure the prices are still fair and reasonable (even if the original award was competitive and a price analysis was performed initially). Similarly, if your deliveries are to be made to a local or centralized delivery point and the original contract calls for statewide deliveries, you may be entitled to a price reduction.
7. Determine if the awarded contract required all the federally required certifications; e.g., Buy America, debarment, restrictions on lobbying, etc.