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**SCHOOL
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Solving the Procurement Puzzle

Managing the
Complexities of
Doing Business in
K–12 School
Foodservice

A WHITE PAPER REPORT
FROM THE SCHOOL
NUTRITION ASSOCIATION

The School Nutrition Association is a national, nonprofit professional organization representing more than 57,000 members who provide high-quality, low-cost meals to students across the country.

CORE PURPOSE:

Well-nourished students, prepared to succeed.

VISION:

Every student has access to nutritious meals at school, ensuring their optimal health and well-being.

MISSION:

We empower and support school nutrition professionals in advancing the accessibility, quality and integrity of school nutrition programs.

VALUES:

- **Integrity:** Act ethically and responsibly, always.
- **Inclusion:** Embrace different perspectives and ideas from SNA's diverse membership.
- **Collaboration:** Share strategies and solutions to achieve professional excellence.
- **Commitment:** Embody care and compassion for student well-being.
- **Courage:** Resolve to protect and defend school nutrition programs.

Solving the Procurement Puzzle

Managing the Complexities of Doing Business in K–12 School Foodservice

A WHITE PAPER REPORT FROM THE SCHOOL NUTRITION ASSOCIATION © 2019

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Special thanks to Procurement Task Force Member Barry Sackin, SNS, B. Sackin & Associates, for his contributions and expertise in compiling, editing and reviewing this report.

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Table of Contents

Foreward	2
Introduction.....	4
How to Use This Report.....	5
The Law	7
K–12 Procurement Education	10
Distribution and Manufacturing.....	15
Methodology of Procurement	20
Cooperatives and Other Group Purchasing Organizations	26
Contract Administration.....	31
Conclusion	34
SNA Procurement Task Force.....	35
Appendix: Glossary of Terms	36
Appendix: Federal Guidance	39
Appendix: Resources	40





Foreward

From the SNA President

October 1, 2019

Dear SNA Member,

To lay out the complex issues surrounding procurement and to assist our members navigate procurement under the new requirements and procurement review process, SNA published the White Paper *Solving the Procurement Puzzle* in 2016. SNA has successfully undertaken many of the recommendations in the Paper, but it requires continuous work. To meet this mission-critical program, SNA has:

- Held several conferences focused on procurement;
- Included procurement in all our conferences, including a procurement track at SNA's Annual National Conference (ANC);
- Published multiple articles in SNA's flagship publication *School Nutrition*, on the many pieces of the puzzle;
- Hosted a series of webinars on procurement;
- Reached out to allied organizations through conference programs and papers to help them understand procurement rules for school foodservice; and
- Developed a procurement "hub" on the SNA website where members can find materials and answers to their questions: www.schoolnutrition.org/Procurement

We continue to build our library of resources, and SNA members can look forward to expanded support over time.

In assessing what we have accomplished and what we still need to do, it was determined that there have been changes in the three years since the White Paper was published. Without changing any substance of this resource and the excellent work that the original Procurement Task Force did in identifying procurement challenges and their recommendations moving forward, we have updated the Paper to make sure that it reflects current policies, regulations and guidance.

SNA welcomes your feedback and any issues you, our member readers, identify in the document that might need further updating.

Gay Anderson, SNS
SNA President 2019-2020





Introduction

School nutrition operators and industry alike have expressed frustration and concern about the lack of knowledge and proficiency—by all parties—with the procurement processes required in the K-12 school foodservice environment. There are a host of factors that lead to angst, including:

- a persistent education gap;
- the tendency of operators to procrastinate on complex, time-consuming procurement tasks; and
- a lack of uniformity and standardization in the process.

The result: It is immensely complicated to get the right product at the right time in the right amount to the child's plate.

To better understand and quantify the current state of the procurement of commercial products in the school nutrition environment, SNA convened a Task Force to explore the issue in Fall 2015. Members of the Procurement Task Force (*page 35*) represented the diversity of SNA; they represented large and small districts, new and tenured directors, various geographic regions, State Agency personnel and manufacturers and distributors. Representatives of the U.S. Department of Agriculture (USDA) served as technical advisors. The outcome of their meetings and discussions is this white paper report, which:

- documents the state of procurement in school nutrition (excluding most issues related to USDA Foods);
- identifies potential strategies that individual school nutrition directors, SNA and other stakeholders may take to promote an improved understanding of and compliance with the procurement process; and
- encourages the implementation of best practices that foster a fair, open, transparent and competitive procurement environment.



How to Use This Report

All Stakeholders in K-12 school foodservice procurement are encouraged to read this report in its entirety. It provides a concise but comprehensive overview of the issues, demonstrating the scope and complexity of the challenges we seek to address in improving processes and practices.

School Nutrition Directors, District Procurement Officers, Other District Administrators and Business Officials should read this report with an eye on self-reflection. Consider the following questions:

- Does our procurement process comply with legal requirements?
- How much time am I and/or my team investing in procurement-related steps?
- Did anything in this report come as a surprise to me? Did I learn anything new about procurement in reading this report? Did this report open my eyes to some problems in our own procurement processes?
- Have we received constructive criticism about our procurement approach from the State Agency or the vendors we work with?
- When was the last time we changed our processes? Which ones? Why?
- Are there other steps that we can and should be improving?
- When was the last occasion I pursued education or training on this topic for myself or my team?
- Have I checked online for current resources that might help me improve our procurement steps?





Manufacturers, Processors, Distributors should read this report to improve their own understanding of the unique characteristics of K-12 school foodservice procurement, as well as to develop appropriate—and generic—tools to assist their school customers. In addition, the report may prompt businesses, particularly those new to this segment, to seek additional training for staff, pursue consultant services or (depending on business volume) explore a dedicated K-12 staff specialist position. As you read this report, consider the following questions:

- Are we doing our part to support good K-12 procurement practices?
- How can we better partner with schools?
- Are we communicating our needs as vendors?
- Are our practices compliant with the law and best practices in procurement?
- Are we always ethical in our business practices?

USDA and State Agency Representatives should read this report to identify areas where additional clarification, guidance and technical assistance is needed to help school food authorities (SFAs) to comply with Federal and State rules regarding procurement. Agency staff should review the existing resources the State makes available to SFAs and determine ways to improve not only the materials themselves, but also the widespread promotion of their availability.

- What training and other resources do we have available on the topic of procurement? Are these materials easy to find and access on the State Agency website?
- Do we market their availability in various communications to SFAs in the state?
- Do we take advantage of a partnership with the SNA state affiliate to promote these resources?

SNA Leadership should read this report and reflect on how recommendations fit into future planning and prioritization. What can the Association do in the short- and long-term to continue to address member needs for procurement training and education? How should financial and staff resources be allocated to potential projects in the larger picture of other key member priorities? Are there opportunities for collaboration, not only with USDA/State Agencies, but also with other membership organizations with a vested interest in the outcome of procurement improvement, such as the Association of School Business Officials International and AASA, The School Superintendents Association, as well as the American Commodity Distribution Association (ACDA) and the International Foodservice Distributors Association?

The Law

Background

School nutrition professionals know better than anyone that the Federal child nutrition programs (CNPs) are subject to a vast and complicated set of rules and regulations. These requirements stipulate the menu items that may comprise meals; eligibility criteria for receiving free and reduced-priced meals; standards for maintaining food safety; frequency of health inspections; professional development for staff; hiring standards for directors; and much more. There are also well-defined rules governing the procurement or purchase of *all* goods and services used in the operation and administration of CNPs. These include foods, beverages, supplies, equipment, technology and various services.

Procurement is just one of the many areas of responsibility for school nutrition professionals administering the CNPs, which grow more complex every year. In addition, in many school districts, procurement may be the responsibility of a district-wide purchasing department or another individual outside of the school nutrition department. Across this spectrum of purchasing hierarchy, it's rare that those responsible have invested the time and resources necessary to understand the complex, multi-tiered procurement regulations that affect school nutrition operations.

Similarly, most of the players in the school nutrition marketplace—including manufacturers, brokers and distributors—find the K-12 foodservice segment completely unlike any other in which they do business. Many do not have a dedicated K-12 specialist on staff who fully comprehends the intricacies of the regulations.

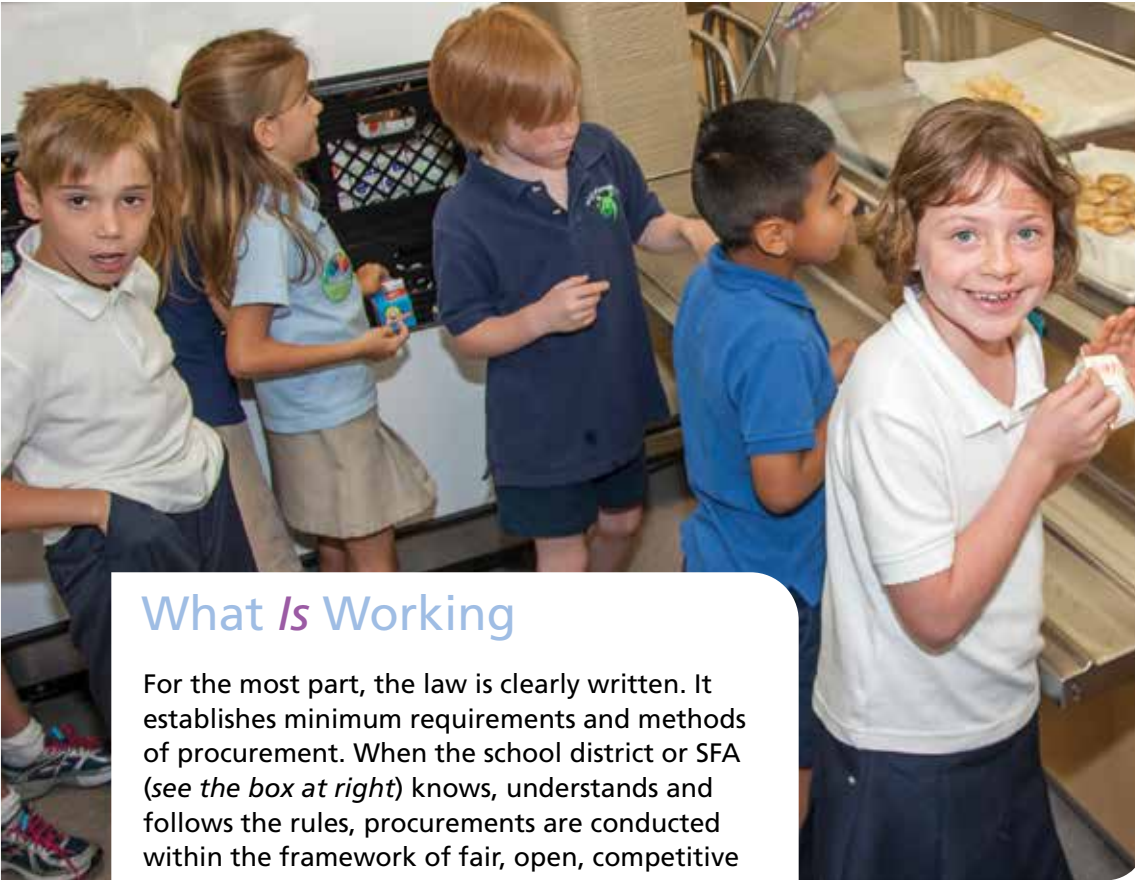
For all involved in the K-12 school food-service procurement process, procurement law seems daunting, extremely time-consuming and highly nuanced.



THE FEDERALISM PRINCIPLE

What is the hierarchy of law? The U.S. Constitution establishes the framework for Federal law: Issues not explicitly addressed in the Constitution are left to lower jurisdictions to govern. This is known as the Federalism Principle. As it applies to this report, States may write their own laws or statutes regarding procurement by schools (and other public entities) as long as the State rules are not *less* restrictive than Federal rules. Similarly, local government entities may write their own rules, as long as they are not *less* restrictive than those established at the State or Federal level.

This hierarchy is important, because schools are required to comply with all levels of rulemaking authority. The Federal requirements are the *minimum*.



What *Is* Working

For the most part, the law is clearly written. It establishes minimum requirements and methods of procurement. When the school district or SFA (*see the box at right*) knows, understands and follows the rules, procurements are conducted within the framework of fair, open, competitive and transparent purchasing.

CNP OPERATION & ADMINISTRATION

When a school district opts to participate in the National School Lunch Program (NSLP) or other Federal CNPs, it enters into an agreement with its State Agency. Each State Agency has been given authority by the Federal government to administer the CNPs in accordance with Federal law—the Richard B. Russell National School Lunch Act, the Child Nutrition Act of 1966—and other applicable statutes. In the law, schools are referred to as non-federal entities and/or subgrantees.

In its agreement, the school district/SFA, must comply with the Federal rules, as well as with any State requirements. The State Agency is required, by Federal statute, to conduct an Administrative Review of each SFA to check and enforce compliance. In Summer 2016, USDA issued guidance to State Agencies for reviews of district procurement practices, including a checklist of items to be reviewed. At the time this report was published, the Administrative Review must be performed at least once every three years, unless a waiver has been granted.

WHO'S WHO?

In 2004, Congress amended the Richard B. Russell National School Lunch Act to differentiate between the responsibilities of the school district and the school foodservice operation. In the law, district responsibilities are referred to as belonging to the Local Education Agency (LEA), while food-service responsibilities are handled by the School Food Authority (SFA). In this report, however, most references to the “district” and the “SFA” are intended to be synonymous, unless specified otherwise.

What's *Not* Working

Ignorance of the law is no excuse for non-compliance. Nevertheless, regardless of size, few SFAs have reviewed Federal law as it applies to school nutrition programs. Because CNPs are Federally funded, all SFAs *must* become familiar with program-specific rules. Unfortunately, the scope and complexity of school nutrition program management leave little time for school nutrition operators to master the rules. Particularly in smaller districts with minimal staff, an SFA may be operating out of compliance without being aware it is failing to meet the requirements.

Potential Solutions & Next Steps

There are three actions that likely will help address shortcomings in understanding procurement law. State agencies, USDA and SNA should work together to:

- communicate and elevate the importance of the four fundamental elements of school nutrition procurements (fair, open, competitive and transparent). In tandem, school district staff responsible for school nutrition procurement should be encouraged to seek out opportunities for more professional development in this area and invest the time necessary to become familiar with their legal obligations in this area of responsibility.
- provide convenient access to the body of procurement law and other procurement-related resources.
- provide convenient access to professional development opportunities to assist SFAs with understanding federal procurement requirements.

WHERE DO YOU FIND THE APPLICABLE FEDERAL LAWS?

All regulations are found in the *Code of Federal Regulations* (CFR). The CFR is divided into 50 titles for each of the executive functions of the government. Title 2 of the CFR is for *Grants and Agreements*. Title 7 is for *Agriculture*. Both of these titles include regulations governing CNPs. Each title is further divided into subtitles, chapters, parts, subparts and sections. The reference for each is a string of letters and numbers.

The government-wide rules pertaining to procurement may be found at *Title 2 of the Code of Federal Regulations, Subtitle A, Chapter II, Part 200, Subpart D, Procurement Standards*, subsection 317 through 326. In regulatory shorthand, this location is: 2 CFR 200.317-326. The requirement for a written code of conduct is found at 2 CFR 400.

School nutrition regulations are in 7 CFR 210-249. The NSLP is subsection 210, Special Milk is 215, the School Breakfast Program (SBP) is 220, the Summer Food Service Program (SFSP) is 225, the Child and Adult Care Food Program (CACFP) is 226, etc. Food Distribution (commodities/USDA Foods) is in 250-254. Many of the regulations for the NSLP are repeated for the other CNPs. For the purpose of this report, we will refer only to the lunch regulations at 7 CFR 210.

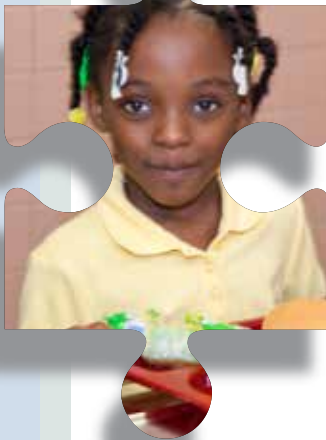
7 CFR 210.21 is the section of the school nutrition regulations addressing procurement. This section of the CFR mirrors what 2 CFR 200 establishes regarding procurement for public entities. There are a few minor differences regarding geographic preferences and the use of vendor-supplied assistance for writing specifications. The section is fairly short and worth reading.

Additionally, 7 CFR 210.16 governs Food Service Management Companies and more specific procurement issues are addressed.



K–12 Procurement Education

Background



Procurement is critically important to a well-run school nutrition operation. For one thing, there are the requirements of law that, if not adhered to, have legal implications. School districts and the individuals responsible for purchasing are liable for compliance, and failure to do so may be very costly. Equally important, well managed procurements will save the operation money that can be invested in making other improvements to the department.

The key to improving procurement practices is education. Whether purchasing is performed by a separate department in the school district or managed by the school nutrition staff, all responsible parties need to learn about what is required and the best practices for success.

The Healthy, Hunger-Free Kids Act (HHFKA) of 2010 addresses procurement directly and indirectly. HHFKA continued Congress's direction to prioritize procurement training for school nutrition programs and personnel. Additionally, it required USDA to update the program review process with a new Administrative Review that would include a focus on administrative practices. USDA has responded in part by directing states to be more rigorous in their review of school district procurement practices. This leads to an increased need for training and technical assistance.



What *Is* Working

Congress and USDA have recognized the importance of procurement to effective school nutrition program management.

- Procurement training and technical assistance has been included in the last two CN reauthorization bills.
- USDA has issued a number of policy memos addressing this topic.
- State Agencies have been directed to conduct a specialized procurement review of school nutrition programs.

In the 2004 Child Nutrition Reauthorization, Congress identified a great need for procurement education and dedicated Federal funds for that purpose. USDA determined that the best use of these funds would be in developing online training for State Agency staff. The intent of this approach was that once trained, State staff could improve service to local districts as trainers and resources. To that end, USDA contracted with the Institute of Child Nutrition (ICN or the Institute), formerly the National Food Service Management Institute, to develop training courses. Check the ICN website for recent procurement training.

For many years, the Institute also offered First Choice, a procurement training program developed especially for school nutrition professionals at the district and school levels. That course has recently been sunset, replaced by Procurement for the 21st Century, also developed for an operator audience. This course is available online, as well as through in-person classes, at no cost to school nutrition operations or individual participants.

Many State Agencies have responded to the need for more education on procurement by developing their own training workshops, tools and resources designed to help school districts navigate procurement complexities. For example, the North Carolina Department of Public Instruction (NCDPI) provides a variety of online procurement-specific resources for school nutrition operators to download and adapt to meet their individual organization's needs. These include template documents, a "procurement checklist" and sample terms and conditions. Although developed by and posted on the NCDPI website, many of these materials can be accessed by individuals in other parts of the country. The same open access is true of a wide variety of online resources produced by many other State Agencies (see page 40).

SNA has also demonstrated an ongoing commitment to improve awareness and knowledge of procurement among its members.

- The Procurement Task Force was convened in Fall 2015 to review the challenges faced by school nutrition programs and recommend tangible steps the Association can take to help members.
- The SNA procurement hub is regularly updated with templates, resources and training www.schoolnutrition.org/Procurement.
- Sessions on procurement are regularly included at SNA conferences and the annual webinar calendar, and articles have been published in *School Nutrition*.

What's *Not* Working

Take into consideration all the responsibilities required of a school nutrition program operator and it's easy to see why properly executing a bid, from solicitation through the contract period, can be such a challenge for so many individual districts. While there are a wide variety of procurement-related tools, templates and training courses available to SFAs, it is clear they are not being used to their full advantage. Instead, there is a prevailing perception that there is a lack of simplified access to procurement-related resources.

Even though many State Agencies provide training on the procurement process, school nutrition and other appropriate district personnel aren't always able to take advantage of such professional development opportunities for a variety of reasons, ranging from time and geographic restrictions to competing priorities. In addition, some State Agencies do not have the financial and/or staff resources to provide such technical assistance.

In either case, many school nutrition operators and district procurement officers must take the initiative to seek out appropriate resources or other learning opportunities. There are a number of barriers that deter this action.

- One barrier is the failure of many school nutrition directors to see the value in and prioritize ongoing professional development in the area of K-12 procurement. This may be due to a variety of factors, including competing priorities and the complexity of the subject matter. In addition, in the absence of any real enforcement of procurement best practices, many directors may feel a resistance to “fixing what isn't broken,” that is, the more tangible consequence that food and other materials *do* come in, the kids *do* get fed and the bottom line *is* met.
- Another barrier is a persistent perception that educational resources are either unavailable or difficult to find, despite regular promotion of these by USDA, State Agencies, SNA and its state affiliates and many industry partners. Given that perception *is* reality, these entities must find a way to combat the time constraints and other demands that afford operators with less time to search for information and resources.
 - » There is no central location for procurement-specific tools and many resources are not presented in a clear and consistent manner.
 - » Online training does not meet the accessibility demands of K–12 foodservice users.
 - » In-person trainings are difficult to attend due to scheduling and travel restrictions.
- A third barrier is the reality that one size does not fit all when it comes to providing educational resources in this profession. School nutrition operators need information presented in a wide variety of formats in order to accommodate different learning styles, accessibility needs and education levels.
 - » In addition to the development of such an array of resources, promoting their availability to disparate target audiences is a separate challenge.
- A lack of uniformity among districts in how procurement is handled is yet another barrier. Each SFA has its individual processes that are established by either formal policy or informal practice. As noted earlier in this report, school foodservice procurement may be managed by someone who is also responsible for the purchase of classroom furniture, text books and custodial supplies. It's very difficult to reach such individuals with appropriate training.



Potential Solutions & Next Steps

While USDA, State Agencies and other supply chain stakeholders are encouraged to use the information in this report to improve development and delivery of procurement education, this section primarily addresses strategies for SNA.

In its Strategic Plan, SNA's Professional Development goals state "School nutrition professionals will have the necessary knowledge, skills and expertise to administer, manage and deliver healthy school meal programs." Through the following efforts, SNA can continue to help bring clarity to a very complex process and educate its operator members on a critically important area of their responsibilities.

- SNA should provide more education sessions on the procurement process at its national conferences. These sessions should be presented by recognized experts and should include the promotion of resources provided by ICN, USDA, ACDA and others.
- In addition to in-person sessions at national and state conferences, SNA should continue to develop online webinars focused on procurement topics; particularly those with step-by-step detail. Live and archived webinars would give more operators the opportunity to avail themselves of training in their own district. (See page 39 for an at-publication-time list of procurement-related webinars and conference presentations available to SNA members at www.schoolnutrition.org/Procurement.)
- Ongoing partnerships among SNA, USDA and allied organizations such as ACDA, the National School Boards Association, the Association of School Business Officials International and AASA, The School Superintendents Association can be leveraged to provide procurement training and other resources and expertise to segment audiences.
- SNA is encouraged to review the online Procurement Toolkit (<http://procurement.schoolnutrition.org>) for updating, with a particular eye to resources that are tied to the Administrative Review by State Agencies.

- SNA could collect materials from individual school districts and state agencies that can be compiled into a “Best Practices Guide.” Members of SNA’s State Agency Council can encourage peers from all State Agencies to share such established training materials that have proven to be effective.
 - » This resource can “live” online, but also should be actively distributed through a wide variety of communications channels to ensure it reaches target audiences beyond SNA’s typical reach (i.e. school business officials).
- SNA and partners could develop a training toolkit specifically for use at state and national conferences for school administrators and school procurement officials.
- SNA should consider the development of an online hub for K–12 procurement resources on SchoolNutrition.org. This hub would provide an access point to its own materials, as well as links to others that are available.
 - » Development of a Q&A reference guide in a flow-chart/decision-tree format would help guide users to the resource that best fits their particular needs.
 - » SNA’s State Agency Council members can be tapped to vet all tools and resources.
- SNA should develop a communications strategy that would reach all stakeholders emphasizing the importance of proper procurement.
 - » This should include the marketing of tools and resources as they are now or become available.
 - » The State Agency Council can use its network to promote the availability of such resources.



Distribution & Manufacturing

Background

K-12 school foodservice is a highly specialized segment in the foodservice industry. Prescriptive rules not only govern what schools can serve, but also affect processing and distribution steps, such as continual USDA inspections and pathogen testing. Thus, many manufacturers must provide dedicated line time for producing school-specific products that are frequently not acceptable in other foodservice channels. Furthermore, schools are extremely price sensitive, limiting the margins available to vendors. This, along with other factors, may limit overall competition as it reduces the incentive to enter the K-12 market.

While a few very large school districts contract directly with food processors and manufacturers and take delivery at their own warehouses, the majority of school districts contract with intermediary distributors. Distributors provide many value-added services for school district nutrition programs. By consolidating orders for a number of schools, the distributor offers economies of scale that can reduce costs. Distributors also may act as agents for districts in making payments to manufacturers, as well as managing USDA Foods inventories.





There are several types of distributors providing a variety of services. **Broad line distributors** serve a wide variety of customers ranging from non-commercial institutions (like schools) to the full spectrum of restaurants (mom-and-pop, national quick-service chains and white tablecloth). Working with a broad line distributor may be advantageous, as its overall size and the volume it handles may result in better pricing and a wider variety of available goods. On the other hand, the broad line distributor may not fully understand the special needs of K-12 school nutrition operations and may be reluctant to carry the particular products that schools have specified and/or be unwilling to provide the level of service schools require at the price point that schools need. That said, some national and regional broad line distributors have made K-12 school nutrition a target market and have added school specialists to their staff who take the time to understand this channel.

In certain areas of the country, there are **specialized** distributors that serve specific food-service channels like school nutrition. These distributors usually have a better understanding of school needs, including the very specialized management of USDA Foods. In some states, these commercial distributors also manage the inventory and distribution of USDA Foods Direct Delivery (brown box) products.

Regardless of the type of distributor that a school district enters into a contract with, it must follow federal law in the procurement of these services. Depending on the size of the account, schools may opt to use one of five approved procurement approaches, including small purchase/informal procurement, sealed bids and Requests for Proposal.

What *Is* Working

Most school nutrition operations are able to order and receive the products they need to provide healthy meals to students. In most markets, there is competition for business, which helps keep prices down. In some areas of the country with many small school districts spread out over large geographic areas (like Wyoming or West Texas), commercial distributors have been able to replace or supplement state distribution systems for USDA Foods Direct Delivery products.

One area that has caused considerable confusion over the years is whether a vendor is permitted to help write specifications for schools. The language in general procurement regulations prohibits vendors who write specifications from bidding on the resulting procurement. However, a part of the National School Lunch Act law includes a limited exemption for schools where vendors can provide "specification information."



What's *Not* Working

There are a number of challenges for manufacturers and distributors working in K-12 school nutrition. From their perspective, the problems can be summed up in the quality of procurement documents and processes issued by local school nutrition operations.

- Bid documents tend to be poorly written. If a purchasing department for a large school district manages the procurement process, as opposed to a school nutrition department, the responsible staffers may not understand the nature of school foodservice distribution, or may not fully understand federal procurement laws.
- Service requests are frequently unrealistic, featuring numerous delivery locations and a very narrow window of time. For example: *Deliveries must be made between 6:00 and 8:00 or 9:00 and 11:00 on Tuesdays to all locations.*
- Specifications are either too general, providing insufficient information to bid the items the district wants, or too specific, limiting what products the distributor can offer.
- Bid lists are not regularly reviewed and culled of items that are no longer needed, resulting in extensive bids when only a fraction of the items will be ordered.
- Forecasting is poor, resulting in wildly exaggerated quantities.
- Orders are not placed in a timely fashion and do not take into account manufacturer lead time needs.
- There is no consistency or consolidation of specifications among districts in a purchasing cooperative or a particular geographic area. Districts may request a multitude of variations. For example, a distributor might be asked to carry 30-40 different burger products. Slotting so many SKUs (Stock Keeping Units) adds cost.
- School meal specifications are not consistent with commercial specifications, requiring SKUs

for schools that cannot serve other channels. For example, the USDA low-sodium specification for vegetables served in K-12 school meal programs is not standard for low-sodium commercial products. Items brought in for, but not ultimately bought by schools (because of the aforementioned poor forecasting) have no alternate outlets.

- The twin trends among school nutrition operations to buy local and increase onsite cooking methods puts more pressure on broad line distributors.
- Schools may not include a formal agreement with their distributors that details the terms and conditions of the *contract*, relying instead on the procurement document.* Similarly, there needs to be agreement between distributors and processors outlining each party's respective responsibilities and liabilities.
- There is concern that not all of the partners and stakeholders involved in the procurement process receive all of the information about pending procurements.
- School nutrition operators sometimes request (or even demand) a number of perquisites from vendors, ranging from gifts or materials for staff meetings and events or student-focused activities to support education and marketing. These requests most likely violate Federal (and State) procurement rules, and almost always would violate ethical purchasing guidelines. They also inevitably add cost.

*As of SY 2019-20, FNS rules now require agreements between distributors and processors.



Potential Solutions & Next Steps

As is true for virtually all areas of the procurement puzzle, education is an essential step to improvement. School districts must learn to be better buyers. Suggestions for improving an understanding of the issues follow.

- Develop and disseminate training materials that specifically address the concerns cited on page 18. SNA, USDA and State Agencies all have a part to play in this effort.
- USDA has mandated that States conduct procurement reviews independent of the Administrative Review. To facilitate success in such reviews, both the State reviewer and the district being reviewed need more comprehensive understanding of the technicalities of procurement and procurement law. Training and technical assistance is a must for all parties.
- Develop a culture of partnership in the procurement process. If the business is not profitable, vendors will exit the market, resulting in more limited competition and less-favorable pricing models.
- Schools should consider pre-bid vendor conferences, either with a group of vendors or one-on-one to identify specific options that would reduce costs for *all* parties.
- Develop written standards of conduct. Federal law requires all school districts to have both a written code of conduct for their procurement activities, as well as written procedures for all of their purchasing. Most states require annual certification of a conflict of interest policy. Vendors would do well to follow this example. If a vendor has a written ethics/conduct policy, they can rely on it in responding to customer requests that might be considered unreasonable or unethical.
- Elevate the importance of procurement as a responsibility of the school nutrition staff. While it is understood that this area competes with the many other demands on directors' time and attention, procurement is a topic too often set aside for what is perceived as more pressing needs.

Methodology of Procurement

Background



As recipients of Federal funds, SFAs must follow a carefully prescribed set of regulations regarding how they go about procuring goods and services. There is a great deal of latitude, however, in how districts actually execute the process. Federal regulations define five basic methods for procurement. The most appropriate and applicable method(s) selected is a function of the size of the resulting contract, as well as the nature of the goods and/or services being solicited. Deciding which method that an SFA will use is one of the first decisions of any K-12 school nutrition procurement. But it's not always obvious—and it's not always the same for all the items purchased *and* it might be appropriate to use more than one.

THE FIVE BASIC METHODS ARE:

1 Micro Purchases. This is a relatively new method developed to provide a legal framework for very small schools and/or very small purchases, defined as less than an aggregate of \$10,000 during the fiscal year. SFAs may make such purchases without a competitive solicitation, and they are directed to spread the business among all possible vendors, especially local sources. Note that even when using the micro purchase option, schools must maintain appropriate documentation.

2 Small Purchases. Federal law defines a “small purchase” as a single or aggregate purchase under \$250,000. Many states or local districts set lower limits for such purchases. While there is no requirement for a formal procurement solicitation for purchases that qualify for the small purchase threshold, there must still be documentation that the solicitation was open and competitive. Written or phone quotes will suffice, as long as they are adequately documented.

3 Sealed Bids (Invitation to Bid [ITB]). When the purchase exceeds the small purchase threshold, SFAs must use a formal procurement method. Where price is the primary point of differentiation among responders, bids are appropriate. Some other factors may be included in an ITB as a screening or pre-qualifying factor. Formal bids require detailed specifications for products and services, but they cannot include a proprietary or restrictive spec; that is, a product cannot be specified by a brand name or manufacturer's code, except as an example. This might be mitigated by including guaranteed minimum quantities and adding "or equal" to the spec. Responders submit sealed bids at a place and time identified in the solicitation. Bids must be opened publicly, and the award should be to the lowest price from a responsive and responsible bidder (*see the box on page 24*). If the SFA determines that the bidder is not responsive or responsible, the award can be made to an alternate bidder, but the reasons for not accepting the lowest price must be obvious and documented.

4 Request for Proposal (RFP). RFPs are formal procurements where factors other than price are used in determining to whom the award will be made. These factors might include service requirements or other criteria that are important to the SFA. A clearly stated and objective weighted scoring formula must be included in the solicitation so all potential responders understand the basis for the award.

5 Non-competitive Awards. Also known as **sole-source procurement**, the non-competitive procurement method should be used only when there is a single potential vendor or there is a clear reason why it is in the SFA's best interest to negotiate a contract, rather than use a competitive procurement process. **All** sole-source procurements require prior approval from the State Agency.

LINE-ITEM VS. SINGLE AWARDS

It's important to understand a critical variable in the sealed bid method: line-item versus single awards.

In a line-item bid, each item is considered separately and the award is made to the bidder offering the lowest price for an item deemed to meet the specification. The benefit of this approach is that the aggregate cost of the products being purchased will be the lowest possible. However, the work of awarding—and of compliance monitoring—is greater, as more vendors and invoices must be reviewed. Also, in responding to the bid, vendors must consider the cost of being awarded only one item; thus, each item must include sufficient margins, to offset the associated costs of serving the district. This might be mitigated by including guaranteed minimum quantities for each delivery.

In a single award approach, the weighted cost of *all* items in the bid is aggregated, with the award going to the one vendor with the lowest total price for all goods or services requested. On the plus side, this minimizes the number of contracts to be administered. Also, bidders can defray their cost of doing business against all of the items, potentially lowering prices overall. In January 2018, USDA issued a new policy allowing evaluation and award of bids based on a subset of all the products on the solicitation. *See resources on page 39 for a link to this policy.* But a major concern with single awards (also called "market basket bids") is the accuracy of forecasting by the SFA. Bidders must consider that the quantities requested may not reflect the actual needs of the district.

Regardless of the specific method and procedures used, SFAs are required to have written policies regarding their procurement practices. In **informal procurements**, the method used (e.g., written versus phone quotes) must be identified. The number of vendors that must be solicited and/or must respond to qualify as an acceptable procurement also should be clearly understood. In addition, a written record to provide accountability and transparency in the transaction is essential.

For **sealed bids**, a more rigorous documentation process must be followed, including formal, published notice that a procurement is in process. This ensures that all possible bidders have the opportunity to be awarded the contract.

Federal law stipulates that SFAs should make a procurement award decision based on “best value.” That said, a district cannot divide a purchase to avoid formal procurement. For example, it could not divide a large equipment purchase into several smaller orders throughout the year in order to apply the small purchase threshold of \$250,000. *All* procurement processes must meet standards of fairness, openness, competitiveness and transparency.



GETTING THE GOODS

SFAs, especially larger school districts and purchasing cooperatives, have two pathways for procuring goods.

One scenario is to bid directly with manufacturers and processors for the products they need, opting to secure delivery and distribution separately. A benefit to this approach is that the SFA receives pricing for items *without* the distributor’s markup. Distribution can be procured separately as a fee-for-service. Depending on the contract between the distributor and the SFA, the distributor may be responsible for paying the manufacturer as the SFA’s “agent,” billing the district the cost, plus fees. Given that Federal law prohibits a cost-plus-a-percentage-of-cost calculation, the fee is frequently a fixed-fee-per-case charge, which can vary. Given the business models of most distributors, this approach limits the distributor’s revenue. In addition, the methodology must be transparent and the district must have the ability to audit.

The other, more common, approach is for the SFA to procure goods through distributors, with the distributor bidding a per-case price that combines both the cost of the goods *and* the fee-for-service. Again, Federal law prohibits cost-plus-percentage purchasing, so the cost of goods is not transparent in this model. However, the per-case price is fixed and fluctuations in cost are the responsibility of the distributor for the terms of the contract. Distributors build in all of their cost factors and risk when calculating the prices that they will bid.

What *Is* Working

Simply put, school districts are purchasing the goods and services they need to provide healthful meals to the children they serve. To a greater or lesser extent, all SFAs are engaged in procurements that follow some variation of the defined and approved methods.

What's *Not* Working

As detailed in the Distribution and Manufacturing section (*pages 15-19*), the quality of school nutrition procurements varies greatly across SFAs. Additional areas of concern identified by the SNA Procurement Task Force include the following observations:

- Many districts do not know the particular requirements for using each of the five approved procurement methodologies. Some “split” bids to circumvent the need for a more formal procurement, which may result in a less-competitive environment.
- Some SFAs understand the subtleties of the requirements, but choose to simply buy what they want/need from whom they want.
- Vendors report ongoing incidents of an SFA not sharing the results of a solicitation. While it is probable that the award was fairly made, the lack of transparency leaves open the possibility that it wasn't.
- Some school nutrition operators or other officials responsible for school foodservice procurement are not adept at planning and organizing their purchases. Federal law requires SFAs to do an evaluation of their needs, buying only what they need, in quantities they can use. Vendors report ongoing examples of SFA procurements when both the items being bid and the estimated quantities failed to reflect what the district is *likely* to buy.
- SFAs should not include items in their procurement requests that will not be ordered. Idle inventory is costly to all parties. A serious problem develops for both distributors and processors when a new contract is awarded to a different vendor, but there remains existing inventory at the old contract holder. In theory, SFAs must only buy from the currently contracted vendor. As partners in the procurement transaction, both the SFA and the vendor being awarded the contract should address this problem upfront, including terms in the contract that ensure a clearing of inventory before the contract is terminated.
- While this report does not address the special challenges of USDA Foods procurement, a related problem is the discrepancy that occurs between an SFA's diversion of its USDA Foods allotment to a processor that is subsequently not awarded a contract. This problem cuts both ways: there are processor representatives and brokers selling to SFAs for whom they do not have an inventory of raw USDA Foods products. For example, a salesperson from Company A calls on a district in the middle of the year to sell beef patties. The district has already diverted its allocation of USDA Foods beef to Company B. In order to purchase Company A's products, the district must transfer raw beef from Company B, undermining its contract award. The failure to honor contracts in this manner (and others) is a procurement problem.

CONTRACT DURATION

Longer-term contracts assure the business to a vendor, which may result in more favorable pricing. However, volatility and uncertainty in the market may cause vendors to include a degree of risk in their pricing. Smart buying practices direct an SFA to evaluate market conditions and discuss this question with all potential vendors to determine what is in the district's best interest, while understanding that purchasing is a *relationship* that should factor the needs of both parties.

In general, SFAs may not award multi-year contracts, because Federal funding for programs is appropriated on an annual basis. That said, awarding one-year contracts with an ability to renew for a specified number of additional one-year extensions is usually advantageous to both parties. However, long-term forecasting of market conditions is difficult and not necessarily reliable. The solution may be to allow increases in price based on a predetermined index. In this way, the underlying terms and conditions of the contract may not change, while prices might fluctuate.

It is important to note that once a contract is signed, all parties must adhere to the agreed-upon terms, including pricing—even under special circumstances. That is the risk inherent in negotiating the contract.

PIGGYBACK BIDS

Where feasible and allowed by State law, Federal law encourages school districts to combine their purchases to leverage economies of scale. Cooperatives (co-ops) and other group-purchasing organizations are discussed in another section of this report (page 25-30). A related concern is "piggy-back" bids.

In this variant methodology, an SFA includes in its procurement solicitation the authorization for other districts to buy under the same terms and prices. While there are advantages to this approach, it can be problematic. Using another SFA's procurement does not absolve a school district of its responsibilities and liability. A failure to follow regulations and policies by the issuing district remains a liability of the subordinate district.

More important, the vendor has proposed pricing based on certain conditions that are specific to the soliciting district. It is unreasonable to expect a vendor to honor those prices if the terms and conditions are different. For example, a soliciting district may identify a single delivery point, but the piggy-backing district requires delivery to multiple sites. Similarly, the pricing for the soliciting district may be determined by a minimum expected delivery quantity. Deliveries of significantly smaller quantities to another district increase the per-unit cost, which may not be reflected in the bid price.

As with any contract, terms must be mutually agreed to by all parties. Both the school district and the vendor must understand and agree to piggy-back provisions. Furthermore, refusal to accept a piggy-back provision cannot be used to reject a bid as non-responsive.

DEFINING A RESPONSIVE BIDDER

Discussions about best procurement practices acknowledge that what is in the district's best interest is awarding the contract to "the most responsive and responsible" bidder. *Responsive* means that the product or service offered meets your needs and specifications. But *responsible* means that the vendor is capable of meeting the terms of the contract.

Let's use an example of a milk bid. In addition to requiring a particular delivery time, a refrigerated truck and the product held within an appropriate temperature range, you might also require milk be delivered in clean and sanitary cases, with a maximum number of cartons or weight per case. If a vendor has a reputation for delivering the product in trucks with insufficient refrigeration or, more commonly, their cases haven't been clean when delivered, they may not be a *responsible* vendor. If the dairy packs heavier cases than you allow, they may not be *responsive*. Making this determination is tricky. But it is fair and reasonable for an SFA to ask for references from comparable districts before awarding the contract based solely on the lowest price.

Establishing the standard for acceptable performance is an important step in the process. School procurement officials should ask a reference to quantify how often a delivery was rejected for failing to meet the temperature or sanitation standard. A procurement officer should make sure the Invitation to Bid clearly states that if two (or another minimum) references report that they rejected deliveries on a defined number of occasions, then it can be established that the vendor is not responsible. There should be no room for misunderstanding about the standards that have been established, and every decision should be documented.



Potential Solutions & Next Steps

Many of the specific steps to address issues raised in the “Background” and “What’s Not Working?” areas of this section are easy to infer from the descriptions. The immense number of variations in methodology for the range of SFAs procuring goods and services make addressing all the potential permutations impossible in this report. Still certain fundamental strategies apply. School nutrition directors and other district officials responsible for procurement should:

- Understand and adhere to the underlying principles of fair, open, competitive and transparent procurements.
- Understand that purchasing is a partnership and will not be successful if it is not *mutually* beneficial to all participating parties.
- Seek education and training on this topic. This is absolutely essential to improving the K-12 school foodservice procurement environment.

Cooperatives and Other Group Purchasing Organizations

Background

Cooperative purchasing is a procurement approach in which a group of school districts join together to accomplish all or some of the steps in the purchasing process, seeking to increase buying power, reduce costs and improve the quality of products and services available to members of the cooperative.

Cooperative purchasing groups are member-based businesses. Cooperatives consisting of entities with public status (e.g. school districts or SFAs) do not need to procure one another's services, as they are all public in nature. But if that same group of entities with public status uses the services of a private or for-profit third party entity to procure on their behalf, the cooperative must formally *procure the services* of that private or third-party entity. Individual SFAs also must be able to verify that the cooperative purchasing group follows Federal, State and local rules, regulations and policies regarding procurement.

As in all best practice business models, it is advisable to create a formal structure with written rules and guidelines when forming a cooperative buying group—this avoids misunderstanding and conflict. Districts should work with their State Agency to determine what will be required to recognize the cooperative. In many, if not most states, the member district school board may be required to formally approve membership and sign an interagency agreement. The guidelines for the cooperative should clearly spell out the duties, responsibilities and liabilities of each member district, as well as the required documentation to ensure consistency and continuity of operations over time.

There is a growing trend for individuals, frequently former district directors, to offer their services to manage a district-based cooperative buying group. These individuals are unlikely to have self-incorporated or established Limited Liability Companies (LLC). Nonetheless, with or





without such a formal business identity, they are still considered for-profit entities and their services must be solicited by the buying group in an open and competitive manner.

Blending the needs of SFAs into a single cooperative purchasing group requires a methodical approach with several steps: planning, analyzing, implementing and monitoring by all of the participating school nutrition operations. After all, the success of the cooperative purchasing group is based on its members' participation in product selection and their use of compromise to reach consensus. Members need to agree on the quality, quantity and criteria/specifications of the products and services, as well as the terms and conditions of the solicitation document. They speak in one voice, preferably through a spokesperson or officer. To ensure continuity, effective cooperative purchasing groups operate with certain universal practices.

SFAs belonging to a cooperative purchasing group generally realize:

- a reduction in their district's administration time in procuring goods and services;

- a higher quality of products with more favorable pricing; and
- the opportunity for a wider range of products.

In addition, the collective knowledge of the members of a purchasing cooperative can create a synergy that benefits the entire group, generating new product concepts, encouraging networking and the sharing of resources.

The decision to participate in a cooperative purchasing group requires accurate data collection and input from key district personnel. Discussions should include the designated administrator from the SFA, examining the time, commitment and legal responsibilities associated with cooperative membership. There may be an existing model within the school district; some participate in cooperative purchasing for such school supplies as books, paper and equipment. The decision should be made *only* after determining that membership is the best option to achieve the overall mission of providing healthful, cost-effective meals to students.

What *Is* Working

If a school district has done its due diligence in determining whether membership in a purchasing cooperative is appropriate for the particular needs of its school meals operation, then it can enjoy many advantages. These include:

- **Increased Purchase Power and Volume.** By combining their respective volumes, districts that participate in a cooperative frequently achieve economies of scale that result in better pricing. Note that such economies are predicated on common terms of service; all districts must agree on those terms to maximize the advantages of the co-op. But for many small- and medium-sized school districts, or those located in rural locations, the combined volume is a critical factor in achieving lower prices, higher quality and shared expertise.
- **New Menu Items.** A cooperative purchasing group offers an enhanced product knowledge base. The combined buying power may influence the quality and improve the availability of unique menu items. Successful menus are often shared among members. Providing higher-quality meals and offering new and different menu items can contribute to customer satisfaction and increased participation.
- **Labor Reduction.** Cooperative purchasing groups often use a prime distributor. This can result in fewer deliveries, fewer invoices and other paperwork to process, fewer checks to write and overall lowered labor costs. Even without a prime distributor, a cooperative purchasing group can handle much of the time-consuming responsibilities of the preparation of solicitation documents and contract management for member SFAs.
- **Direct to Manufacturing Advantages.** Purchasing cooperatives provide an opportunity to purchase large volume items directly from the manufacturer. This is a cost-effective advantage, as it eliminates the incentives and cash awards the manufacturer typically provides to the distributor.
- **Networking Opportunities and Expert Leadership.** Membership in a cooperative purchasing group is an excellent means for school nutrition directors to share innovative ideas, as well as solutions to common problems. Newer group members can benefit from the knowledge of more experienced peers, who often serve on a governing or advisory board for the group.



What's *Not* Working

Membership in a purchasing cooperative is not the right solution for every SFA. Even those that are small or located in rural areas may find that the particular membership composition, administrative structure of the group or other factors present more problems or headaches than benefits. Identified disadvantages include the following:

- **Achieving Consensus Among Members.** To reach the best possible price, the best practice is for members to agree on similar products. “Market basket” bids that, in effect, obtain pricing for a range of competitive items without a commitment to buy do not provide the same benefits as realized when reducing the number of SKUs by cooperative agreements.
- **Increased Food Cost.** Some members of a cooperative purchasing group may experience an increase in food costs, due to higher-quality products being the consensus of the group.
- **Less Delivery Flexibility.** There is the possibility of larger and less-frequent deliveries, depending on the number of participants in the cooperative, the location of sites and the distributors that are awarded contracts. This can be a trade-off with pricing. If a single drop site can be redistributed to member SFAs and their respective locations, the best price may be offered. But if each member district requires its own delivery to one or multiple locations, this will be reflected in higher prices. In certain cases, smaller member districts with smaller deliveries may result in increased costs for larger member districts. In other cases, the smaller member districts may be unable to accept the minimum number of cases required. A possible solution is for the cooperative’s solicitation to allow tiered pricing depending on the size of individual shipments.
- **Storage Complications.** In some cases, a district’s dry and cold storage space is unable to accommodate an increase in delivery volume

GROUP PURCHASING ORGANIZATIONS

A Group Purchasing Organization (GPO)—also known as a Group Buying Service—is a third-party organization that buys larger quantities of products on behalf of other entities. GPOs are relatively new to the K-12 school foodservice segment.

By federal regulation, a school district must competitively procure the services of a GPO in the same manner as any other goods and services. If a district is using a GPO for other school needs (such as paper, supplies and furniture) but the organization’s services weren’t procured competitively, or the solicitation did not specifically include foodservices, the SFA *cannot* use the GPO’s pricing. To use a GPO for the school meals operation, the service must be procured following the same steps and standards as any others.

Some GPOs charge a “membership fee.” Others do not, and, in fact, some don’t charge *any* fees for their services. Certain GPOs actually remit rebates for purchases made for the SFA. Regardless of the particular approach of the GPO, its services *must* be procured through a solicitation.

It’s also important to keep in mind that GPO services and distribution are separate activities. Some broad line distributors have their own GPO as a subsidiary business. But neither the GPO nor the distributor can bundle the two activities for an SFA—unless that option was captured in the solicitation from the SFA. Note that the solicitation cannot be written in such a way that restricts competition to the point that a joint GPO/distributor is the only responsive bidder.

When acting as the agent for a school district, the GPO must adhere to the same rules that govern the SFA. Once again, school nutrition operators and industry representatives each need to have a clear understanding of the federal regulations (7 CFR 210.9, 210.21 and 2 CFR 200.21) as they pertain to cooperatives and GPOs. The GPO has the same obligations to meet fair, open, transparent and competitive procurements as its K-12 school nutrition customers.

due to less-frequent deliveries. The SFA may be compelled to purchase or rent additional storage equipment or space as a consequence.

- **Administrative Costs.** Membership fees are typically required for the sustainability of a cooperative purchasing group. There may be additional administrative costs vital to the operation of the cooperative that must be factored into the participation decision of individual SFAs.

- **Insufficient Educational Resources Available.** K-12 school nutrition procurement complexities are already difficult to understand, before adding in the variables that are inherent in a purchasing cooperative—and there are far fewer resources available to assist operators and industry in understanding how best to leverage the advantages and overcome the problem areas associated with procurements through a cooperative arrangement.
- **Codes of Conduct.** There needs to be universal compliance with the Federal Written Codes of Conduct and Performance of Employees Engaged in Award and Administration of Contracts, found in Policy Memo SP 09-2015, SFSP 02-2015.

Potential Solutions & Next Steps



SNA should work in partnership with USDA and the State Agencies to identify best practices for procuring goods and services through an SFA-based cooperative, as well as through a GPO (see *the box on page 29*). Templates for procuring the services of a GPO also are important resources to identify, develop, validate and share.

COOPERATIVES FOR COMMODITY PROCESSING

Many K-12 school foodservice cooperative purchasing groups are formed to increase the members' ability to purchase ready-to-use end products from an SFA's USDA Foods bulk allotment (commodity processing). Ready-to-use end products allow for the use of USDA Foods in the final production of many mainstay menu items in school meals. By using USDA Foods in the final product, there can be a significant cost savings to the district. Commodity processing often requires very large predetermined quantities, which is why it makes sense for smaller SFAs to band together in this endeavor.

If the cooperative purchasing group will be including ready-to-use end products made from USDA Foods on its solicitation documents, the group should check with the State Distribution Agency to determine requirements for such contracts. There may be limitations on pricing structures and/or the method of distribution of these items.

Additionally, from time to time, USDA offers available USDA Foods Direct Delivery items in truckload quantities when there is a surplus or remaining inventory near the end of the year. These are usually offered to large districts. Cooperatives that have sufficient combined average daily participation to warrant a full truck may have an opportunity for these extra allotments.

In addition, SNA should consider a review and revision of the online SNA Procurement Toolkit to include more information related specifically to purchasing cooperatives and group buying organizations. Templates for different styles of cooperatives, along with other details and links to related resources likely would prove helpful. The creation of a procurement plan prototype for child nutrition programs also may serve to help standardize approaches—in both individual SFA and cooperative purchasing models. SNA also should consider developing educational programming (conference sessions and webinars) specific to best practices in purchasing cooperatives.

Contract Administration

Background

Procurement of goods and services for K-12 school nutrition programs involves a series of steps. The last of these is the administration of the contract, known as “contract compliance.” Too often, attention to this final step gets lost in the day-to-day operation of a school meals program, and it’s considered something “that takes care of itself.” But this is a responsibility that is as critical as all the other steps in the procurement process.

Properly procured and negotiated, the contract is a binding agreement that clearly articulates expectations for performance. It must be fair and recognize the needs and interests of all parties; it is definitely not a one-sided arrangement.

In the case of school nutrition contracts, whether written or oral, the **vendor** agrees to provide the required goods or services at the stipulated prices and in accordance with the terms of the contract. The **SFA** agrees to place orders in a timely fashion; accept deliveries in the quantities and at the times set in the contract; and pay the agreed-upon prices, according to payment terms.

By law, the SFA is responsible for administering the procurement contract. This means that the district must have a system in place to ensure that the vendor meets its obligations to the contract. This means delivering *exactly* what the contract requires, including items by brand, code, pack size and price. Furthermore, the condition of goods at the time of delivery must equal the terms established in the contract. For example, a contract may call for milk to be no more than 35° F at the time of delivery, packaged in clean cases, placed in the identified school/site cooler, etc. It is the district’s responsibility to ensure that those terms are being met.





Pricing is obviously one of the more important elements that require monitoring by the district. As most vendors, both processors and distributors, deal with multiple customers, it is possible that invoices might post incorrect prices. In addition to monitoring that the correct goods are actually delivered, school district staff must review all invoices comparing the prices charged against the prices agreed to.

A properly negotiated and executed contract also includes the terms for resolving problems if or when they occur, including the circumstances that would result in the termination of a contract and, possibly, barring a vendor from responding to future solicitations for a designated period of time. The issue of debarment is addressed in both statute and regulation, but what's most important is to remember that the goal of terms for resolution is to protect *all* parties, while ensuring that the SFA, as custodian of federal funds, safeguards the program and the students who are served by it.

What *Is* Working

For the most part, school districts are receiving the goods and services for which they have contracted.

What's *Not* Working

- Too many school districts fail to invest the time necessary for proper contract administration and compliance, unless in cases of an egregious violation of the terms, conditions and pricing.
- It is a detailed and time-consuming process that involves communicating terms to staff at all receiving sites, empowering them to make decisions if a delivery falls short of expectations and reviewing invoices continually and consistently.
- When receiving goods, it is critical that receiving site staff confirm that the products delivered are the ones that were specified in the contract and that they are delivered in proper condition.
- Policies for acceptable substitutions are not always clearly articulated to all parties.
- Without sufficient lead time for delivery built into the contract, schools will sometimes accept improper or unacceptable products in order to provide meals to students.
- SFAs with small staffs lack the resources to check all invoices; many do not have the minimal system for spot reviews.
- The person approving invoices and statements for payment does not always have the source documents needed to monitor for compliance.



Potential Solutions & Next Steps

Ongoing training and frequent communication are essential factors to improving contract administration, but the first step is for SFAs to elevate the priority of procurement—and all its related steps—in K-12 school foodservice operations.



Conclusion



The foundation for effective practices in all areas of K-12 procurement is that the process must be fair, open, competitive and transparent. While these are core reminders to stakeholders all along the supply chain, it's important to note that these principles have limited effect when they are only *read*, rather than acted upon.

The members of the SNA Procurement Task Force strongly urge all readers to *use* this report, applying the information as a “springboard” for future initiatives related to procurement at the district, state and national levels. Let this be the start of an ongoing dialogue among stakeholders, with each pledging to keep the lines of communication open and to ensure that continual improvement of K-12 school foodservice procurement practices remains a top priority.

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Appointed by the 2015-16 SNA Board of Directors in Fall 2015.

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Appendix: Glossary of Terms

For an updated Glossary, please visit www.schoolnutrition.org/Procurement

Administrative Review—the periodic oversight of the local SFA operation of the Federal child nutrition programs (CNPs) by the State Agency and/or USDA. It is required by the Richard B. Russell National School Lunch Act. It features both offsite and onsite components, including the review of program documentation and observance of activities to ensure compliance with federal rules and regulations.

Bid Documents—the documents that are issued as part of a solicitation for a K-12 school foodservice procurement. Bid documents may include the boilerplate language for the general specifications a district may have; product or service specifications; terms and conditions for the award of a contract; and required forms and certifications to be provided by the proposer. The term “bid documents” also applies to other procurement methods, including RFPs.

Bid Lists—a list of vendors invited to respond to a procurement solicitation. The bid list is not necessarily a comprehensive list of potential vendors, and unless the district has established pre-qualification criteria for participation, other vendors may respond.

Broker—a manufacturer’s sales representative. Brokers typically represent multiple manufacturers.

Brown Box—an outdated term for USDA Foods (commodity) products that are shipped directly to school districts and other “recipient agencies.” The term originated from the generic brown box (with a USDA seal) used to package and ship these products. Since USDA began purchasing commercially labeled products that may come in manufacturers’ packaging, they have renamed these items as “Direct Ship” or “Direct Delivery.”

Child and Adult Care Food Program (CACFP)—provides meals and snacks to children and adults in care and other programs. The CACFP is typically operated by providers other than K-12 schools. Some schools participate in the CACFP as vendors or sponsors in order to provide meals or snacks not allowed within the traditional school meal programs.

Child Nutrition Reauthorization (CNR)—the periodic legislative process to extend authorization for the Federal CNPs that are not permanently authorized. The National School Lunch and School Breakfast Programs are permanently authorized. The CNR process is also used as an opportunity to review and amend, as necessary, all provisions of the law. These amendments can result in the establishment of new regulations applied to the operation and administration of all CNPs.

Commercial Products—items procured by K-12 school meal operations that do not include USDA Foods. Products that include USDA Foods as ingredients, while commercial in nature, are referred to as “commodity processed.”

Cooperative Purchasing Groups—a collection of school districts that, by agreement, aggregate their procurements to increase their buying power and reduce their costs. Co-ops may be administered by a member district, a committee of member districts or a contracted third party.

Cost-plus Contracts—contracts in which the vendor bids a fee over the cost of goods or services. The fee is a fixed amount, but the base cost may fluctuate depending on market conditions or other considerations. Under current law, vendors may not propose a percentage over the cost of goods or services. In 2016, USDA published a proposed regulation that would prohibit cost-plus contracts.

Distributor—the intermediary between school districts and manufacturers/processors in the food distribution chain. *Broad line* distributors serve a wide range of foodservice customers. *Specialty* distributors focus their efforts on one or two market segments for which they have expanded knowledge, such as K-12 school foodservice.

Fee-for-service—the additional charge made by a processor or distributor for the additional ingredients or services to be provided over the base cost of the goods or services. In food processing, particularly of USDA Foods, the fee-for-service is the price net of the raw commodity ingredient provided by USDA. In distribution, a vendor may charge a fixed-fee-per-case for storage and/or delivery.

Food and Nutrition Service (FNS)—an agency within the Office of Food, Nutrition and Consumer Services of the U.S. Department of Agriculture (USDA). FNS has oversight responsibility for the Federal child nutrition programs, including school meal programs and food distribution (USDA Foods).


Foodservice Management Companies (FSMC)—a for-profit entity that provides a range of contracted meal services. FSMC contracts with school districts range from providing management services to providing meals. USDA regulations define FSMCs as providing any administrative service to the client. The specific regulations regarding FSMCs for school foodservice are found at 7 CFR 210.16.

Forecasting—the process of estimating future quantity needs for procurement. It requires in-depth knowledge of upcoming menus and projecting the number of servings needed for every purchase period. Forecasting is an essential element of effective foodservice purchasing.

Group Purchasing Organizations (GPOs)—third-party entities, usually for-profit, that contract with manufacturers to procure a range of goods at negotiated prices for participating clients, including schools or other entities. A GPO may charge a fee (a fixed annual membership charge, a per-unit fee or a combination of both) or make its profit from fees charged to the manufacturers from which it buys on behalf of districts.

The Healthy, Hunger-Free Kids Act (HHFKA)—the Child Nutrition Reauthorization bill enacted in 2010. When this report was published in Fall 2016, it was the most recent CNR and established a number of new rules for the Federal school meal programs, including nutrition standards, local school wellness policies, State Agency reviews and more.

The Institute for Child Nutrition (ICN)—formerly the National Food Service Management Institute, it was created by an act of Congress to provide research, training and technical assistance for the Federal CNPs. It is headquartered at the University of Mississippi in Oxford.



Informal Procurements—those made by a simple solicitation, typically by fax or phone. Federal law allows such procurements for purchases with an aggregate value under \$150,000 (the “small purchase threshold”) and “micro purchases” (see *below*). States usually establish much lower thresholds for informal procurements, so school districts should check with their State Agency to confirm what is allowable.

Invitation to Bid (ITB)/Invitation for Bids (IFB)—a formal K-12 school foodservice procurement method that follows a very specific set of steps, including receiving sealed bids. ITBs are used when the sole (primary) difference among proposers is price.

Local Education Agency (LEA)—as defined in the Elementary and Secondary Education Act of 1965 (ESEA), a public board of education or other public authority recognized in a State as an administrative agency for its public elementary and/or secondary schools. For the Federal school meals programs, Congress amended the Acts to reflect that the school district, or LEA, has certain responsibilities independent of the responsibilities of the foodservice operation, which is the School Food Authority (SFA).

Line-item Bid—a bid in which each item is awarded independently of all other items on the bid. This is different from an “all-or-nothing” or aggregate award.

Manufacturers/Processors—companies that produce items; in this case, food, beverage, equipment, technology and supplies for the foodservice segment.

Micro Purchases—a new method of procurement for very small (currently less than an annual aggregate of \$10,000) purchases. Micro purchases do not require any formal or informal procurement process. However, USDA policy directs that the principles of fair and open purchasing must still be employed.

National School Lunch Program (NSLP)—the Federal program authorized by the Richard B. Russell National School Lunch Act of 1946.

Piggyback Bids—procurements that authorize other entities (specifically school districts) to purchase against contracts awarded to the issuing agency. Piggyback contracts are allowed by law, but are contingent on the solicitation explicitly requesting it as an option, and vendors explicitly agreeing to allow them.

Pre-bid Conference—a best practice approach to procurement wherein the district meets with potential vendors, either individually or as a group, to discuss a pending procurement. These meetings may be used to share information about the requirements of the solicitation and/or to get feedback from potential vendors to help inform the district in drafting the procurement.

Prime Vendor—usually a broad line distributor who provides a range of goods to a school district. The prime vendor is the first option for all purchases that the vendor is able to provide.

Procurement—this is the process used for *soliciting* goods and services, while **purchasing** is the act of *acquiring* the goods and services.

Recipient Agency (RA)—a school or other entity that receives USDA Foods.

Request for Proposal (RFP)—a method of procurement in which factors other than price are considered.

Richard B. Russell National School Lunch Act—the act of Congress that authorized the National School Lunch Program. It includes the legislative requirements for the provision of school lunch and certain other child nutrition programs. The Child Nutrition Act of 1966 is a companion to the Act and authorizes the School Breakfast Program and other child nutrition programs and operations.

School Breakfast Program (SBP)—was authorized by the Child Nutrition Act of 1966. It parallels the National School Lunch Program in terms of basic requirements.

School Food Authority (SFA)—a legal entity within the Local Education Agency (LEA) with specific responsibilities for administering school-based child nutrition programs.

Summer Food Service Program (SFSP)—provides meals when school is not in session, usually summer, but also at other times when school meals are not available. The SFSP may be sponsored by schools or other entities, including camps, community agencies and care facilities. SFAs may opt to serve as a vendor of summer meals to another SFSP sponsor.

Single Awards—aggregate or “all-or-none” awards of contracts for multiple food items.


SKUs (Stock Keeping Units)—a system for identifying individual products produced or sold. An SKU identifies the item by manufacturer and product code.

Small Purchases—purchases with a value less than the small purchase threshold. The Federal small purchase threshold is currently \$250,000, but states or local agencies may establish lower limits. Small purchases do not require formal procurement, but still must adhere to the fundamental principles of fair, open and competitive procurement.

School Nutrition Association (SNA)—the national membership organization representing more than 57,000 school nutrition professionals. It was established in 1946.

Sole-source Procurement—a rare type of procurement that requires prior approval by the State Agency. It is used when there is only one potential responsive and responsible vendor or in case of an emergency. An example of a sole-source contract might be support for a legally procured technology system after the initial term of the support contract, if there is no third-party vendor who can provide those services.

Solicitation—the issuance of a procurement request. The terms of a solicitation may be governed by district or state laws or policies with regard to how potential vendors are notified that the district is seeking responsive and responsible vendors for goods or services and how long the notification must be posted.



Specifications—the detailed requirements for the goods or services being sought in the K-12 procurement. *General* specifications are the terms and conditions for doing business with the district. *Detailed* specifications are the exact description of the requested goods or services.

State Agency—the agency in the State government that is assigned administrative responsibility for the Federal CNPs. In most cases, the state department of education is the assigned State Agency. However, some states assign all or some of the programs to other agencies, including the department of agriculture or the department of health and human services.

U.S Department of Agriculture (USDA)—the executive branch of the Federal government responsible for the administration and oversight of the Federal child nutrition programs.

USDA Foods—the official name of the Federal commodity food program. Administration of the USDA Foods Program falls under the Food Distribution Division of the Food and Nutrition Service agency at USDA. USDA Foods also refers to the specific commodity food items made available to SFAs participating in the National School Lunch Program.

USDA Foods Direct Delivery—the formal name for what is colloquially known as brown box commodities. It includes items purchased by USDA and shipped directly to recipient agencies, as opposed to commodities purchased by USDA for diversion to manufacturers to be further processed, i.e., made into usable end products.

Appendix: Federal Guidance

Draft Tool for Local Agency Procurement Reviews of SFAs in SY2016-17

<http://www.fns.usda.gov/draft-tool-local-agency-procurement-reviews-sfas-sy2016-17>

Updated Guidance: Contracting with Food Service Management

<http://www.fns.usda.gov/updated-guidance-contracting-food-service-management>

State Agency Prior Approval Process for SFA Equipment Purchases

<http://www.fns.usda.gov/state-agency-prior-approval-process-sfa-equipment-purchases>

Bonding Requirements for Food Service Management Companies and Other Subcontractors

<http://www.fns.usda.gov/bonding-requirements-food-service-management-companies-and-other-subcontractors>

Compliance with and Enforcement of the Buy American Provision in the NSLP

<http://www.fns.usda.gov/compliance-and-enforcement-buy-american-provision-nslp>

Guidance on Competitive Procurement Standards for Program Operators

<http://www.fns.usda.gov/guidance-competitive-procurement-standards-program-operators>
<https://www.fns.usda.gov/school-meals/compliance-enforcement-buy-american>
<https://www.fns.usda.gov/school-meals/buy-american-and-agriculture-improvement-act-2018>

Local Agency Procurement Reviews SY2015-16

<https://www.fns.usda.gov/school-meals/local-agency-procurement-reviews-school-food-authorities>
<https://www.fns.usda.gov/school-meals/local-agency-procurement-reviews-school-food-authorities>

Procurement Standards and Resource Management Requirements Related to Franchise Agreements

<http://www.fns.usda.gov/procurement-standards-and-resource-management-requirements-related-franchise-agreements>

Procuring Local Meat, Poultry, Game, and Eggs for Child Nutrition Programs

<http://www.fns.usda.gov/procuring-local-meat-poultry-game-and-eggs-child-nutrition-programs>

Office of Management and Budget Super-Circular 2CFR Part 200

<http://www.fns.usda.gov/office-management-and-budget-super-circular-2cfr-part-200>

Written Codes of Conduct and Performance of Employees Engaged in Award and Administration of Contracts

<http://www.fns.usda.gov/written-codes-conduct-and-performance-employees-engaged-award-and-administration-contracts>

Procurement Geographic Preference Q&As—Part II

<http://www.fns.usda.gov/procurement-geographic-preference-qas-%E2%80%93-part-ii>

Market Basket Bids

<https://www.fns.usda.gov/market-basket-analysis-when-procuring-program-goods-and-modifying-contracted-product-lists>

Micro-Purchases

<https://www.fns.usda.gov/school-meals/federal-micro-purchase-and-simplified-acquisition-thresholds>

Cooperative Agreements

<https://www.fns.usda.gov/qa-purchasing-goods-and-services-using-cooperative-agreements-agents-and-third-party-services>

SP45-2016

June 30, 2016

SP40_CACFP12_SFSP14-2016

June 2, 2016

SP39_CACFP11_SFSP13_2016

June 2, 2016

SP35-2016

May 5, 2016

SP24-2016

February 3, 2016

SP12 CACFP06 SFSP09-2016

November 13, 2015

SP04 CACFP04 SFSP04-2016

November 9, 2015

SP03 CACFP03 SFSP03-2016

November 6, 2015

SP01 CACFP01 SFSP01-2016

October 22, 2015

SP30 CACFP16 SFSP18-2015

March 18, 2015

SP09 CACFP03 SFSP02-2015

November 21, 2014

SP03 CACFP02 SFSP02-2013

October 9, 2012

Note: All guidance issued by USDA for the Federal child nutrition programs can be found at: www.fns.usda.gov/school-meals/policy

Appendix: Resources

State Agency Links

Many resources that are available from State Agencies are not exclusive to those particular states. You may find helpful tools outside of your own state.

Alabama Department of Education
<http://www.alsde.edu/sec/cnp/Pages/home.aspx>

Alaska Department of Education & Early Development
<https://education.alaska.gov/tls/cnp/>

Arizona Department of Education
<http://www.azed.gov/health-nutrition/>

Arkansas Department of Education
<http://www.arkansased.gov/divisions/human-resources-educator-effectiveness-and-licensure/child-nutrition-unit>

California Department of Education
<http://www.cde.ca.gov/lis/nul/>

Colorado Department of Education
<http://www.cde.state.co.us/nutrition>

Connecticut Department of Education
<http://www.sde.ct.gov>

Delaware Department of Education
<http://www.doe.k12.de.us/domain/149>

Florida Department of Agriculture & Consumer Services
<http://www.freshfromflorida.com/Divisions-Offices/Food-Nutrition-and-Wellness>

Georgia Department of Education
<http://snp.wpgadoe.org/>

Hawaii Department of Education
<http://www.hawaiipublicschools.org/TeachingAndLearning/HealthAndNutrition>

Idaho Department of Education
<http://www.sde.idaho.gov/cnp/>

Illinois State Board of Education
<http://www.isbe.state.il.us/nutrition/>

Indiana Department of Education
<http://www.doe.in.gov/nutrition>

Iowa Department of Education
<https://www.educateiowa.gov/pk-12/nutrition-programs/national-school-lunch-program>

Kansas Department of Education
<http://www.kn-eat.org>

Kentucky Department of Education
<http://education.ky.gov>

Louisiana Department of Education
<https://cnp.doe.louisiana.gov>

Maine Department of Education
<http://maine.gov/doe/nutrition/>

Maryland Department of Education
www.eatsmartmaryland.org

Massachusetts Department of Elementary & Secondary Education
<http://www.doe.mass.edu/cnp/>

Michigan Department of Education
<http://www.michigan.gov/schoolnutrition>

Minnesota Department of Education
<http://education.state.mn.us/MDE/fam/fns/>

Mississippi Department of Education
<http://www.mde.k12.ms.us/OCN>

Missouri Department of Elementary & Secondary Education
<https://dese.mo.gov/financial-admin-services/food-nutrition-services>

Montana Office of Public Instruction
http://opi.mt.gov/Programs/SchoolPrograms/School_Nutrition/

Nebraska Department of Education
<https://www.education.ne.gov/NS/>

Nevada Department of Agriculture
<http://nutrition.nv.gov/>

New Hampshire Department of Education
<http://education.nh.gov/program/nutrition/>

New Jersey Department of Agriculture
<http://www.state.nj.us/agriculture/divisions/fn/>

New Mexico Public Education Department
<http://ped.state.nm.us/nutrition/index.html>

New York Department of Education
<http://portal.nysed.gov/portal/page/portal/CNKC>

North Carolina Department of Public Instruction
<http://childnutrition.ncpublicschools.gov/>

North Dakota Department of Public Instruction
<https://www.nd.gov/dpi/SchoolStaff/ChildNutritionFoodDistribution/>

Ohio Department of Education
<http://education.ohio.gov/Topics/Other-Resources/Food-and-Nutrition>

Note: All web links are accurate at the time of this publication, but they are always subject to change.

Oklahoma Department of Education
<http://sde.ok.gov/sdelchild-nutrition-programs>

Oregon Department of Education
<http://www.ode.state.or.us/search/results/?id=62>

Pennsylvania Department of Education
<http://www.education.pa.gov/Teachers%20-%20Administrators/Food-Nutrition/Pages/default.aspx>

Rhode Island Department of Education
<http://www.ride.ri.gov/cnp/Home.aspx>

South Carolina Department of Education
<http://led.sc.gov/districts-schools/nutrition>

South Dakota Department of Education
<http://doe.sd.gov/cans/index.aspx>

Tennessee Department of Education
<http://www.tn.gov/education/topics/school-nutrition>

Texas Department of Agriculture
<http://www.squaremeals.org/>

Utah State Office of Education
<http://www.schools.utah.gov/cnp/>

Vermont Department of Education
<http://education.vermont.gov/student-support/nutrition>

Virginia Department of Education
<http://www.doe.virginia.gov/support/nutrition/index.shtml>

Washington Office of Superintendent of Public Instruction
<http://www.k12.wa.us/childnutrition/>

West Virginia Department of Education
<http://wvde.state.wv.us/child-nutrition/>

Wisconsin Department of Public Instruction
<http://dpi.wi.gov/school-nutrition>

Wyoming Department of Education
<https://edu.wyoming.gov/beyond-the-classroom/nutrition/school-lunch/>

School Nutrition Association
SNA Procurement Hub
www.schoolnutrition.org/Procurement

Toolkit

School Nutrition Procurement Toolkit
<http://procurement.schoolnutrition.org/>

Webinars On Demand

(Exclusive to SNA members and require login)

"Best of #SNIC19: Procurement Woes: A Case Study"
<https://www.pathlms.com/sna/courses/12340/>

"Buy American Act"
<https://www.pathlms.com/sna/courses/11325>

"Best of #ANC18: No More Guessing Games, Using Data to Get Exactly What You Need"
<https://www.pathlms.com/sna/courses/11319>

"Best of #LAC18: Procurement Ethics: What Should You Do?"
<https://www.pathlms.com/sna/courses/11324>

SNA Presentations Library

The Presentations Library features Powerpoint slides that accompanied live conference presentations. There is no audio or video. Access to certain presentations may be exclusive to SNA members. Please visit the SNA presentations library for more recent procurement presentations.

Annual National Conference 2019

"Buy American Compliance: You Can Do It"

"Controlling Critical Quality Checkpoints in Your Procurement"

"Leverage the Buying Power of a Co-op for Cleaner Labels and Healthier Options"

"Procurement: The Biggest Differences about the Biggest Districts"

"Answering the USDA Foods Riddle: How will I Divert what I will Use and Use What I Divert?"

Presentations and handouts are located here:
<https://schoolnutrition.org/meetings/presentations-library/anc/2019/>

Legislative Action Conference 2019

"Group Purchasing Cooperatives: Should You Buy In?"
https://schoolnutrition.org/uploadedFiles/2_Meetings_and_Events/Presentation_PDFs/LAC_2019/Breakout-Session-Group-Purchasing-Cooperatives.pdf

School Nutrition Industry Conference 2019

"Aligning Your Procurement Needs with the District's Procurement Practices"
https://schoolnutrition.org/uploadedFiles/2_Meetings_and_Events/Presentation_PDFs/SNIC_2019/Educ-Sess-Aligning-Your-Procurement-Needs.pdf

"Procurement Woes: A Case Study"
https://schoolnutrition.org/uploadedFiles/2_Meetings_and_Events/Presentation_PDFs/SNIC_2019/Educ-Sess-Procurement-Woes-Case-Study.pdf

Note: All web links are accurate at the time of this publication, but they are always subject to change.



Annual National Conference 2018

"Buy American"

"Equipment Selection Best Practices"

"No More Guessing Games: Using Data to Get Exactly What You Need"

"The Power of Accurate Forecasting with USDA Foods"

"Procurement: Big Ideas from Big Districts"

"Procurement and Administrative Reviews"

"Procurement of USDA Foods"

"Putting Forecasting at the Forefront"

"Solving the Procurement Puzzle: Procurement Do's and Don't's"

"Standards of Conduct in Procurement: Ensuring Integrity"

"Strength in Numbers with Collaborative Purchasing"

Presentations and handouts are located here:
<https://schoolnutrition.org/meetings/presentations-library/anc/2018/>

School Nutrition Industry Conference 2018

"Pre-conference Session: Collaborative Purchasing 101"

"Pre-conference Session: Procurement and the Administrative Review"

"Industry's Role in Procurement and the Administrative Review"

"Co-ops & GPOs: Your Questions Answered"

"How and When to Buy American and Buy Local"

"The 10 Steps to Managing the Procurement Process (and Prevent and Bid Process)"

Presentations and handouts are located here:
<https://schoolnutrition.org/meetings/presentations-library/snic/2018/>

School Nutrition Archives

Visit <https://schoolnutrition.org/news-publications/sn-magazine/archives/> to access the following individual issues and articles

September 2019:

Are Clear Procurement Skies...

<https://editions.mydigitalpublication.com/publication/?i=617917&ver=html5&p=28>

Positive Procurement Partnerships...

<https://editions.mydigitalpublication.com/publication/?i=617917&ver=html5&p=36>

Cracking the Equipment Equation...

<https://editions.mydigitalpublication.com/publication/?i=617917&ver=html5&p=48>

June/July 2019:

Putting the FOOD in USDA Foods

<https://editions.mydigitalpublication.com/publication/?i=593368&ver=html5&p=78>

October 2018:

Buy American: Eat American

<https://editions.mydigitalpublication.com/publication/?i=531532&ver=html5&p=72>

September 2016:

From Procurement to Plate

<https://editions.mydigitalpublication.com/publication/?i=336998&ver=html5&p=24>

Solving the Procurement Puzzle

<https://editions.mydigitalpublication.com/publication/?i=336998&ver=html5&p=26>

To Bid on Not to Bid...

<https://editions.mydigitalpublication.com/publication/?i=336998&ver=html5&p=34>

Institute of Child Nutrition

Check www.theicn.org for new resources on procurement

American Commodity Distribution Association

School Recipient Agency Processing Handbook

<https://www.commodityfoods.org/processing-resources>

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