Purpose

ADD Procurement Questions and Answers to Section 12000, Frequently Asked Questions, Item 12040, Procurement of your CACFP ADC Handbook.

Implementation

Immediately

Procedure

The following questions and answers will be added to your CACFP ADC Handbook:

**Question:** Is the contractor liable if reports and documents, used in support of meal claims and prepared by the Food Service Management Company (FSMC)/Vendor, are determined to be inaccurate?

**Answer:** Yes. Program regulations require contractors to accept final financial and administrative responsibility for management of a proper, efficient and effective food service. Additionally the regulations require that a contractor who contracts with a FSMC/Vendor shall remain responsible for ensuring that the food service operation conforms to the contractors agreement with the State. The contractor is responsible for reviewing the FSMC/Vendor to ensure compliance with program requirements and requiring corrective action from the FSMC/Vendor if applicable.

**Question:** According to the new Farm Bill regulations, contractors receiving funds through the Child Nutrition Programs may apply a geographic preference when procuring unprocessed locally grown or locally raised agriculture products. Does this mean competition does not need to occur and contractors can simply pick a farmer to provide them with fresh, unprocessed vegetables?

**Answer:** No. The most important principle to a good procurement is that it is competitive and allows for free and open competition. A contractor must still get quotes from several farmers when procuring unprocessed locally grown or locally raised agricultural products, so that competitors have an opportunity to complete for the bid. The way in which a geographic preference is applied could depend on whether the procurement method is informal or formal. If informal, i.e. falling below the small purchase threshold, a contractor may simply want to approach approximately 3-4 local producers and obtain price quotes. Competition is ensured by developing a solicitation that contains criteria which all the respondents will be subject to.

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This Policy Remains in Effect Until Further Notice
If the procurement exceeds the small purchase threshold, a formal procurement method must be used which would involve the sealed bidding process (i.e. IFB) or the competitive negotiation process (i.e. RFP). This would entail public notification of the solicitation; however, when procuring locally unprocessed agricultural products the notification may be focused on the locale in which the contractor is situated as a criteria of the solicitation. In a situation where the solicitation for locally unprocessed agricultural products is in fact open to offerors beyond the local area, a way in which to apply a geographic preference is to grant preference points to the local farmers who respond to the solicitation.

**Question:** The Joint Explanatory Statement accompanying the new Farm Bill legislation states that de minimis handling and preparation might be necessary to present an agricultural product to a contractor in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton. Additionally, consistent with FNS guidance, geographic preference may only be applied to the procurement of unprocessed agricultural products which are locally grown and locally raised, and that have not been cooked, seasoned, frozen, canned, or combined with any other products. Does produce that has been chopped or cut fall into the category of “minimal handling and preparation necessary to present in a useable form?”

**Answer:** Unprocessed agricultural products that have been chopped, cut, sliced, diced or shucked do meet the parameters of unprocessed as used in the Farm Bill. Therefore, contractors and other service institutions may use a geographic preference when procuring those agricultural products.

**Question:** Is processing meat into a hamburger patty allowed under this rule?

**Answer:** No. Grinding meat into a hamburger is considered “processing” and therefore geographic preference may not be applied to this product. Livestock and poultry can only be butchered in order to still be considered “unprocessed”.

**Question:** According to the new Farm Bill regulations, contractors receiving funds through the Child Nutrition Programs may apply a geographic preference when procuring unprocessed locally grown or raised agricultural products. How is “local” defined? For example, could a contractor only accept bids/offers for unprocessed agricultural products from farmers within a 50 mile radius?

**Answer:** Due to the geographic diversity in each state, the contractor responsible for the procurement has the discretion to define the area for any geographic preference (e.g., State, county, region, etc.). However, it is important to keep in mind that local preference should not be defined in a way that unnecessarily limits competition.

**Question:** Section 104(d) of the William F. Gooding Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a Buy American provision, Section 12(n) of the NSLA (42 USC 1760(n)) requiring that a contractor, to the maximum extent practicable, purchases domestic commodities or products. Does this provision extend to other products like paper plates, equipment, or software?

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Answer: No. The Buy American provision applies to domestic commodities or products, meaning an agricultural commodity that is produced in the United States, and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

Question: A report accompanying the Buy American provision also states that a food product processed in the United States “substantially” using agricultural commodities produced in the United States means that over 51% of the final processed product consists of agricultural commodities that were grown domestically. Should the packaging of a product be factored in as a portion of this final processed product?
Answer: No. The packaging of a product is not included in the requirement that over 51% of the final processed product consist of domestic agricultural commodities.

Question: Can a contractor purchase directly from a Buying Organization or Group?
Answer: Contractors are not prohibited from purchasing from a buying organization or group, as long as they comply with procurement requirements. However, a contractor cannot purchase directly from a buying organization without considering other sources. Depending on whether the procurement is informal or formal, the appropriate competition must take place to ensure that the contractor is obtaining the lowest responsive bid or offer. Joining or procuring directly from a buying service without opening up competition to other like sources does not ensure that the lowest responsive bid or offer has been obtained. The prices of a buying group or organization could be factored in and assessed against other bidders or offerors.

Contact
If you have any questions please contact your Community Operations office.