



Procurement

Wyoming Department of Education

Last Update
7/16/2013

Table of Contents

Procurement Procedures	3
Procurement Process	4
Solicitation and Contract Documents	4
Contract Development.....	5
Pre-Approved or Pre-Qualified Supplier or Vendor Lists.....	5
Procurement Methods	6
Small Purchase Procedures.....	7
Formal Procurement.....	7
Basic Contract Types.....	9
Fixed Price	9
Cost Reimbursable	9
Non-Competitive Negotiation.....	10
Sole Source	11
Economic Price Adjustments.....	11
Discounts, Rebates, and Credits	12
Contract Administration	13
Documentation	13
Nonperformance.....	13
Protest Procedures	14
Debarment and Suspension.....	14
Fair and Ethical Practices.....	14
Conflicts of Interest.....	15
Gratuities, Favors, and Gifts	15
Geographic Preferences.....	15
Open and Free Competition	16
Anti-Competitive Practices.....	16
Buy American	16
Open and Free Competition	16
Anti-Competitive Practices.....	16
Farm-To-School Initiative	14
Cooperatives (Co-ops).....	18
Food Service Management Companies.....	19

Procurement Procedures

Procurement procedures apply to all purchases for goods or services that are supported, in whole or in part, with non-profit food service account funds and assets.

Proper procurement practices are essential to ensure fairness and that the best products and services are obtained at the best price. However, the primary purpose of the federal procurement regulations is to ensure maximum open and free competition, and ensure that only allowable contract costs are paid with non-profit school food service account funds.

The School Food Authorities (SFA)s are responsible for ensuring that allowable costs are net of all discounts, rebates, and applicable credits, and also that all expenditures are necessary, reasonable, and allocable.

Public institutions or organizations must follow the most restrictive of state, local, or federal procurement standards. Public institutions must also determine cost allowability by using applicable program regulations and Office of Management and Budget (OMB) Cost Circulars. Public school food authorities are generally local governmental entities and, therefore, subject to OMB Circular A-87.

Non-profit institutions or organizations may use their own established procurement procedures as long as they conform to federal requirements, but are subject to OMB Cost Circular A-122 to determine cost allowability and must still follow all applicable program regulations.

All SFAs must have their procurement guidelines in writing. SFAs must also maintain a written "standard of conduct" following 7 CFR 3016.36(b)(3) and have written protest procedures in place to handle and resolve any disputes relating to their procurement processes.

All procurements in the School Nutrition Programs must be competitive and when made with non-profit school food service account funds must also meet all standards set forth in program regulations and applicable OMB Cost Circulars. Child Nutrition Programs are governed by the Code of Federal Regulations (CFR) under 7 CFR Parts 210, 215, 220, 3016, and 3019 (as applicable).

Proper Procurement

A proper procurement results in the SFA obtaining the best product or service at the best price, promotes full and open competition, and will ensure that only allowable costs are paid to contractors and costs are net of all discounts, rebates, and applicable credits.

The SFAs can identify the net allowable portion of their contract costs that can be funded from the non-profit school food service account and the amount of unallowable contract costs that must be funded from other sources.

Remember that SFAs can enter into contracts that result in unallowable costs, but the SFA cannot use non-profit school food service funds to pay any amount for unallowable costs or any amount above net allowable costs.

It is important that the SFAs consult with their own legal counsel regarding the use of any particular contract language, to ensure that all Federal, State, and local requirements are being met.

Procurement Process

Pre-Procurement Actions

- Identify what will be purchased
- Estimate the cost, understand allowable and unallowable contract costs
- Develop/update a bidders list (if appropriate)
- Identify the procurement method to be used

Solicitation and Contract Documents

SFAs must have a clear and accurate description of the material, product, or service to be procured. All requirements, which must be fulfilled, have to be identified and cannot contain features which unduly restrict competition.

When it is impractical or uneconomical to make clear and accurate descriptions of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other requirements. The specific features of the named brand, which must be met by suppliers, shall be clearly stated per 7 CFR 3016.36(12)(3)(i).

Restricting procurement to a brand name or a specific product is not permitted; however, situations do arise when a SFA has a compelling need or reason to purchase a brand specific item. The SFA would then need to document all reasons for this requirement. The SFA must still maximize competition even in the brand specific procurements.

If only one supplier is available nationally, the State Agency (SA) can authorize the SFA to conduct a noncompetitive negotiation with that one supplier, if noncompetitive negotiation is allowed under applicable State and local rules.

SFAs must describe cost reporting requirements fully in its solicitation documents. Without adequate details on how to report costs to the SFA, a potential contractor will lack the information needed to determine allowable and unallowable costs, including

how the contractor will provide the SFA the benefits of discounts, rebates, and credits. The potential contractors must be able to establish the best and most responsive prices and properly establish the fixed price component (if applicable). In addition, SFAs must be able to determine whether non-profit school food service account funds may be used to pay all or only part of the cost(s) billed by a contractor.

These requirements should not place an additional burden on contractors as they already track the costs that are billed to SFAs and have accounting and billing systems in place for SFA contracts under Generally Accepted Accounting Principles (GAAP) and good business practices.

Contract Development

A potential contractor cannot develop or draft specifications, requirements, statements of work, invitations for bids, request for proposals, contract terms and conditions, or any other document for use in conducting procurement per 3016.60(b). SFAs must have sufficient information to develop well-written specifications and procurement solicitations. SFAs can obtain adequate and pertinent information through a variety of sources, including trade shows, market research, conferences, and discussions with manufacturers and suppliers. Using these resources allows the SFA to develop solicitation documents that promote full and open competition.

Potential contractors can provide information, but cannot write specifications, evaluation criteria, or any other contract terms or conditions. In many instances, the company may not be aware that an SFA has copied available company information verbatim, or a SFA may utilize the specification from another SFA's solicitation without knowing that the original solicitation itself was improperly copied from a company's literature, specification, website, etc.

An SFA that uses another SFA's solicitation documents should always inquire as to the origin of any information so that they do not unintentionally violate procurement provisions. The inquiry should be pursued until the original author of the documents is identified.

The SFA can choose between two cost reporting provisions for **cost reimbursable** solicitation documents and contracts. The contractor can identify allowable and unallowable cost on billing documents or contractors must exclude unallowable costs from billing documents and certify that only allowable costs are submitted for payments.

Pre-Approved or Pre-Qualified Supplier or Vendor Lists

Regulations allow for the use of pre-approved or pre-qualified lists of vendors, persons, firms, or products. However, a SFA should make sure that this is not prohibited under applicable State laws and/or is permitted under the SFAs written procurement policy.

Bidders may be limited to a pre-approved list as long as it is permitted and the SFA's procurement procedures still ensure maximum open and free competition.

The procedures the SFA will follow when conducting procurement and using a pre-approved list depends on the procedures that were used to place the vendors on this list. Some lists are nothing more than mailing lists of potential vendors; i.e., any supplier that may be interested in competing for the SFA's business. However, some lists may be made up of vendors that were subject to a comprehensive, competitive evaluation and must compete with other vendors before being included on this pre-approved list.

When using a "mailing list," the SFA must still fully follow the procurement process. If the SFA uses a pre-approved vendor or supplier list, a technical evaluation of the vendor's products and eligibility to participate in a contract with the SFA occurs prior to adding the vendor's name to this list. In some cases, the prices of products have been established through this competitive process, but not delivery or handling charges. When using this form of pre-approved vendor, the SFA would initiate a competitive procurement for those features that had not previously been subject to competition, but can limit responsive bidders to those on the pre-approved list.

In all cases, the SFA must make sure that:

- The list is current and updated at least annually.
- A suitable number of qualified sources exist on the list.
- When applicable, the product or services on the list are specific in nature, not just a general description such as food, supplies, etc.
- All potential vendors had the opportunity to be included on the list.
- When applicable, all potential vendors were subject to the same evaluation and ranking criteria.
- Vendors that did not request or compete for inclusion on the list are not on the list.
- The opportunity exists to add new qualified vendors.
- Potential vendors are not prohibited from qualifying for inclusion on the list during the solicitation period.
- A system exists to remove listed vendors, for cause.

Procurement Methods

- **Small Purchase** – Total purchase does **not** exceed the small purchase threshold.
- **Formal Procurement** – Total purchase does exceed the small purchase threshold.

A small purchase is a simpler process than formal procurement. However, the total purchase must be within the small purchase threshold. Public agencies must use the most restrictive of state, local, or federal guidelines.

The thresholds are as follows:

- Federal \$150,000.00
- State of Wyoming \$7,500.00
- School Districts \$25,000.00 (W.S. 21-3-110 (B)(viii))
 - **Districts must get competitive bids for purchases between \$10,000.00 and \$25,000.00**
- Local (depends on the written local procurement standards)

Open and free competition must still prevail and small purchase procedures do not change the requirements of comparability, documentation (competitive bids), and must avoid conflicts of interest. Remember to balance cost with what is to be purchased and what is available. Don't spend more money getting and/or achieving competition than what will be spent for the needed item(s).

Small Purchase Procedures

1. Solicitation documents
 - a. Describe the goods or services needed
 - b. Due dates
 - c. Other relevant factors
2. Contact an adequate number of available, qualified sources to achieve competition (if possible)
3. Written price/rate quotes
 - a. Time frames
 - b. Confirm verbal quotes
4. Documentation
 - a. Purchase information
 - b. Procurement process

Formal Procurement

Value of purchase exceeds threshold for small purchases.

- More rigorous and prescriptive:
 - Competitive Sealed Bidding (i.e., IFB – Invitation for Bids)
 - Competitive Negotiation (i.e., RFP – Request for Proposals)
- Allows the identification of evaluation factors and their relative importance

Formal Procurement Procedures

1. Identify allowable methods, either an RFP or an IFB
2. Prepare solicitation and contract documents. Detailed bid specs must be developed
3. Advertise. Bids/Proposals must be publicly solicited
4. Receive and evaluate submissions. Measure and document why one company's response to a particular criterion is better than another

5. Award contract
6. Execute contract
7. Administer contract
8. Maintain documentation
9. Retain all required records for three years after final payments and all pending matters have been closed and completed
10. SFAs and/or contractors may be required to submit any or all documents to the State Agency for review
11. Have written protest procedures

Formal Procurement Methods

- Competitive Proposal
 - Awarded contract may be either Fixed Price or Cost Reimbursable
 - To be used when more than one source submits an offer
 - Generally used when conditions are not appropriate for the use of Sealed Bid
- Sealed Bid
 - Can award only a Fixed Price Contract and the successful bidder can be determined principally on the basis of price
 - Must have adequate and realistic specifications or purchase descriptions
 - Must have at Least two or more responsible bidders that are willing and able to compete effectively

Competitive Proposal Procedures

- Prepare Solicitation and Contract Documents
 - Use Request for Proposal (RFP)
 - Must identify all evaluation factors and their relative importance
- Advertise
 - Proposals will be solicited from an adequate number of qualified sources
- Receive and Evaluate Submissions
 - Must have a method for evaluation of the received proposals and for award selection (Score Card)
 - SFAs cannot include prior experience as a scoring category since it would violate the USDA's free and open competition regulation for procurement.
 - All responses must be honored to the maximum extent possible
- Award Contract
 - Award will be made to the responsible party whose proposal is the most advantageous
 - Price and other factors must have been considered
- Administer Contract
- Maintain Documentation

Sealed Bid Procedures

- Prepare Solicitation and Contract Documents
 - Use Invitation for Bid (IFB)
 - Must have complete, adequate, and realistic specifications or purchase descriptions
- Advertise
 - The IFB must be publicly advertised and bids shall be solicited from an adequate number of suppliers. Must have two or more responsible bidders
 - Must provide sufficient time for response
- Receive and Evaluate Submissions - All bids will be publicly opened at a predetermined time and place as was previously stated in the IFB.
- Award Contract
 - A firm, fixed price contract award will be made in writing.
 - Award is made to the lowest priced, responsive, and responsible bidder
 - Consideration must have been given to all discounts, rebates, credits, or additional costs. The contract can be awarded to a higher bidder but the SFA must have documented sound reasons to justify not choosing the lowest priced bidder
 - Any or all bids may be rejected. Can reject bidders only for sound, documented reasons
- Administer Contract
- Maintain Documentation

Basic Contract Types

• Fixed Price

- Firm Fixed Price
- Fixed with Economic Adjustment
- Fixed with Prospective Price Predetermination

For fixed price or fixed fee contracts:

- Contractors should have taken into consideration factors such as discounts, rebates, and credits when formulating their prices
- SFA's are not required to determine the allowability of costs resulting from fixed price contracts
- Costs must still be necessary, reasonable, and allocable to the nonprofit school food service

• Cost Reimbursable

- Cost Contract
- Cost Plus Fixed Fee
- **Cost Plus Percentage***
- **Cost Plus Percentage of Income (applies to FSMCs)***

***Prohibited Contracts:** These contract types are expressly **unallowable** for the federal Child Nutrition Programs.

The SFA **must** include the following provision in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents for such contracts:

- “Allowable costs will be paid from the non-profit school food service account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.”

The SFA can choose between two cost reporting provisions. The contractor can either:

- Identify allowable and unallowable costs on billing documents for each cost submitted for payment, or
- Exclude unallowable cost from billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs.

Other provisions that are required for **cost reimbursable** contracts are as follows:

- The contractor must identify the amount of each discount, rebate, and other credits on bills and invoices presented to the SFA for payment monthly or if approved by the WDE less frequently. However, this information cannot be reported no less frequently than annually.
- The contractor must identify how it will report discounts, rebates, and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.
- The contractor must maintain documentation of all costs, discounts, rebates, and credits and must furnish such documentation upon request.
- No payment will be made from the non-profit food service account for any contract costs that fail to meet the above requirements.

Non-Competitive Negotiation

Non-competitive negotiation is permitted only for documented sole source (single source), emergency purchases, or when there is inadequate competition. There may be only one supplier of a specific product for the entire State of Wyoming. However, that is a lack of competition not a true sole source.

Non-competitive negotiation compensates for inadequate competition, while price and terms must still be negotiated. However, non-competitive negotiation is not permitted due to tardy bid preparation, undue restrictions, requirements for brand name without cause, or when prohibited by state or local rules.

Unlike sole source in which a solicitation is not issued, noncompetitive negotiation occurs after the solicitation has been issued but competition on that solicitation has been deemed inadequate.

Regardless of the circumstance, a contract cannot be awarded unless negotiations are actually conducted with one or more potential contractors. Negotiations must include both price and terms using the same procedures that would be followed for competitive proposals.

Sole Source

In the Child Nutrition Programs, a sole source procurement occurs only when the goods or services are available from only one manufacturer through only one distributor or supplier.

When faced with an actual sole source situation, an SFA must obtain SA approval, and then go directly to the one source to negotiate terms, conditions, and prices.

Often a sole source situation is confused with a lack of competition, which occurs when an SFA receives an inadequate number of responses to its solicitation. This lack of competition may result from overly restrictive solicitation documents, an inadequate number of suppliers in the area, or the procurement environment may have been compromised by inappropriate supplier actions; i.e., market allocation schemes.

Economic Price Adjustments

A contract with economic price adjustment is appropriate when:

- Contract performance will or may cover an extended period of time;
- There is serious doubt concerning the stability of market conditions during the period of the contract;
- Adjustment standards or indices agreed to are based on contingencies outside the contractor's control; and
- Contingencies, such as increases in labor costs, that would otherwise be included in the contract price can be identified and covered separately in the contract.

The economic price adjustments, which allow an SFA to adjust costs in the contract, must be tied to an appropriate standard or cost index. Relating the price adjustments in a contract to an index allows the SFA to ensure that increases under the contract are not without basis. For example, if fuel prices are increasing drastically, then an appropriate index—such as the Consumer Price Index—will reflect this change.

The terms of the economic price adjustment, including the appropriate standards or indices to which it will be tied, must be expressly identified in the original solicitation and contract documents.

The SFA, however, needs to decide whether they would like to include these in their contract; it is not the vendor's decision. It is also important to recognize that the SFA will most likely be advised by the contractor when costs go up, but they will not necessarily notify the SFA when costs go down. The economic price adjustment clause is intended not only to give vendors an option to increase their price, but also for the SFA to demand price reductions when appropriate.

Discounts, Rebates, and Credits

The SFA is responsible for ensuring that allowable costs are net of all discounts, rebates, and applicable credits. However, there are no prescribed or specific methods to be used to identify these amounts.

The contractor must maintain records and source documents in support of discounts, rebates, and credits. They do not have to identify sources but must be able provide sufficient information and can do so without compromising confidential business information or relationships.

The United States Department of Agriculture (USDA) provided the following prototype contract language requiring the return of purchase incentives to SFAs:

"The _____ School District shall ensure that _____ (Company/FSMC) fully discloses all discounts, rebates, allowances, and incentives received by the Company from its suppliers. If the Company receives a discount, rebate, allowance, or incentive from any supplier, the Company must disclose and return to the _____ School District the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the _____ School District. All discounts, rebates, allowances, and incentives must be returned to the _____ School District during a mutually agreed upon timeframe that is beneficial to the School District."

The SFAs may also opt to use the language found in 7 CFR Part 210.21(f)(i):

"Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA."

In addition to ensuring that SFA contracts contain appropriate language requiring the return of discounts, rebates, and applicable credits to the SFA, it is critical that SFAs monitor contract compliance on an ongoing basis and strictly enforce all contract provisions, including those related to the return of discounts, rebates, and applicable credits.

Contract Administration

A contract administration system must be maintained which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contract. SFAs need to be meticulous in contract management, particularly when the contract contains an economic price adjustment clause.

Remember, the SFA, not the contractor, is ultimately responsible for ensuring that expenditures from the non-profit school food service account are allowable costs.

Documentation

Retain all required records for at least three years after final payments and all pending matters have been closed and completed.

Grantees (SFAs) or sub grantees (contractors) may be required to submit any or all documents to the State or Federal Agency for review.

These documents include:

- Solicitation documents
- Specifications
- Evaluation criteria
- Procurement procedures
- Proposed contracts
- Final contracts
- And all contract terms

Nonperformance

Termination for cause or convenience should be included in all contracts, as well as financial penalties for nonperformance, corrective actions, or restitution.

Confront nonperformance by having comprehensive contract terms, timely written notification, prompt termination, rejection of any future bids or responses, and maintain all records.

Protest Procedures

- Grantees (SFAs) and sub grantees (contractors) will be responsible for the settlement of all contractual and administrative issues arising out of procurements.
- **Written protest procedures** must be in place to handle and resolve disputes.
- A protestor must exhaust all administrative remedies with both the SFA and the WDE before pursuing a protest with the United States Department of Agriculture (USDA).
- Review of protests by the USDA will be limited to specific instances, such as violations of federal law or regulations.

Debarment and Suspension

Any contracts awarded by a grantee or sub grantee for federally-required audit services, regardless of dollar amount, and any other procurement contract paid with federal assistance and expected to equal or exceed \$25,000.00 must have verification regarding debarment, suspension, ineligibility, and voluntary exclusion.

To meet this requirement a SFA can:

- Include a suspension/debarment statement within the text of the signed contract.
- Use the state-approved certification form as an attachment.
- Check the federal Excluded Parties List System (EPLS) on the internet at www.epls.arnet.gov. The SFA should make note of the findings within the procurement documentation when the EPLS is utilized.

Grantees and sub grantees cannot award (sub grant or contract) at any tier to any party that is debarred or suspended (7 CFR 3016.35).

Fair and Ethical Practices

A written code of “standards of conduct” governing the performance of employees engaged in the award and administration of contracts supported by federal funds shall be maintained (7 CFR 3016.36(b) (3)).

“Standards of conduct” should include policies on conflicts of interest, real or perceived, and the acceptance or soliciting of gratuities, favors, gifts, or anything of monetary value.

The written “standards of conduct” must provide for penalties, sanctions, or other disciplinary actions for any violations of those standards.

Conflicts of Interest

No employee shall participate in the selection, award, or administration of a contract when any of the following persons has a financial interest in the firm selected for the award:

- The employee.
- Any member of his/her immediate family.
- People with whom there is an affectionate personal relationship.
- An organization which employs or is about to employ any of the above.

Gratuities, Favors, and Gifts

Employees will neither solicit nor accept gratuities, favors, or any item with monetary value from vendors, potential vendors, or parties to sub-agreements including:

- Entertainment
- Lodging
- Transportation
- Gifts
- Meals

The grantee or the sub grantees may set minimum acceptance rules where the financial interest is not substantial or if the gift is an unsolicited item of nominal value to the extent permitted by state or federal guidelines.

The persons engaged in procurement activities should have a personal commitment to integrity and never be self-serving, be fair in all aspects of the procurement process, be alert to conflicts of interest, and avoid all compromising situations.

Geographic Preferences

Geographic preferences are expressly prohibited even if required by state or local procurement rules. Advantage based on location is strictly prohibited. However, effective October 1, 2008 institutions receiving funds through the Child Nutrition Programs may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products (Farm to School, Farm to Plate purchases).

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. It is also important to note that all milk served in the Child Nutrition Programs must be pasteurized and meet State and local standards. Pasteurized milk is the only dairy product for which geographic preference may be applied.

While a **geographic preference may be used to encourage the purchase local products** by enabling an institution to grant an advantage to local growers, this provision does not eliminate the requirement for procurements to be conducted in a manner that allows for free and open competition, consistent with the purchasing institution's responsibility to be responsible stewards of federal funds.

Open and Free Competition

Competition is the “rivalry between businesses striving for the same customer.” It is a condition of the environment, and may not always exist.

Open and free competition is required by the USDA, ensures availability of the best products at the best prices, and prohibits restrictive actions.

SFAs must always:

- Give identical bid specifications or requests for proposals to all potential vendors.
- Include all-important information such as delivery schedules, quantities, product specifications, and purchase conditions.
- Make cost or price comparisons.

Anti-Competitive Practices

A contract cannot be awarded to potential vendors that wrote specifications, solicitation documents, and/or contract language. Potential bidders may provide information for the specifications but cannot prepare any documents.

Buy American

SFAs are required to purchase, to the maximum extent possible, domestic products for use in meals served in its Child Nutrition Programs. The “Buy American” requirement specifies that SFAs should purchase domestically produced food and food products. The purpose of this requirement is to ensure that the highest quality foods are available, and to support American agriculture. Exceptions are allowed when food preferences can only be met with foreign goods, if insufficient quantities and/or quality are available in the USA, or if domestic costs are significantly higher. The Buy American provision also applies to entities that purchase on behalf of a SFA.

There are a number of ways SFAs can comply with this provision. SFAs should include a Buy American clause in all product specifications, bid solicitations, requests for proposals, purchase orders, and any other type of procurement documents issued.

SFAs are also encouraged to purchase locally produced foods to the maximum extent possible. However, the intent of this is not to create a geographical preference for purchases of locally produced foods but to limit local product purchases to those that are practicable while still following federal procurement rules calling for free and open competition. Therefore, the SFA should always remember that all purchases must be made competitively, consistent with Federal and State procurement laws and regulations, and without in-State or local geographical preferences.

Farm-To-School Initiative

The Farm-to-School initiative was developed to encourage schools to purchase unprocessed locally grown and/or locally raised agricultural products from small, local farmers and producers; however, the SFA must still make all purchases in accordance with all federal procurement regulations and applicable State and local laws and statutes. Therefore, the SFA could identify potential local farmers or producers with its procurement solicitations. It is important to note, however, that Farm-to-School purchases are often less than the applicable small purchase threshold. Therefore, the SFA would be able to use the relatively simple, informal procurement procedure to obtain desirable products.

What are unprocessed locally grown and/or locally raised agricultural products?

- Products that meet the definition of unprocessed or minimally process per 7CFR Part 210.21(g)(2).
- Allowable products include, but are not limited to:
 - Fruits;
 - Vegetables;
 - Meats (Including fresh or unprocessed frozen products and formed products, such as patties, that contain no additives or fillers.);
 - Fish (Including whole, form, filets or nuggets that contain no additives or fillers);
 - Poultry (Including whole, form, or various cuts);
 - Dairy (Please note that while unflavored fluid milk is allowed, flavored milk or any processed dairy products such as yogurt, cheeses, etc. is not allowed);
 - Eggs; and
 - Grains (Including quinoa, rice, barley, etc. in whole form and other grains in ground form such as flour)

A geographic preference is allowed to be used for the purchase of unprocessed, locally raised agricultural products.

When considering the different categories of food purchased in school food service operations, the basic guidelines for purchasing from local sources in Wyoming are:

Meat

Red meat animals raised in Wyoming and offered for sale within Wyoming must be slaughtered and processed in a state Department of Agriculture-inspected facility. If that meat is bought or sold across state lines, it must be processed in a federal USDA-inspected facility. Animals slaughtered and processed in a “custom-exempt” plant may not be sold; that meat is for consumption by the owner(s) of the animal.

Poultry

Poultry raised in Wyoming and offered for sale within the state must be slaughtered and processed in a state Department of Agriculture -inspected plant, an USDA-inspected plant, or be a grower inspected by the state. Wyoming agricultural producers selling raw poultry are exempt from licensing but not inspection. However, as with red meat, only poultry processed in an USDA-inspected plant may be sold or bought across state lines.

Dairy Products

Dairy products used in school food service programs must be pasteurized.

Eggs

Grade B or better eggs are required to be used in food service establishments, including school food service programs. Fresh shell eggs (Grade B or better) may be purchased from local producers if the farmer holds an egg-grader license from the Wyoming Department of Agriculture.

Produce (Fruit and Vegetables)

No formal inspections or regulatory oversight are required of fresh, whole uncut, raw produce. Processed items (including minimally processed such as sliced, chopped, or peeled) must have been processed by a Wyoming licensed manufacturer in a licensed and inspected facility. Processors/manufacturers must be licensed by the Wyoming Department of Agriculture Consumer Health Services division. Additionally, if the processor/manufacturer is from another state they must have a Wyoming Food license as a distributor.

Cooperatives ("Co-ops")

- Purchasing Cooperative
 - An Organization formed by SFAs to conduct purchases
 - Acts as a Purchasing Agent to its members
 - Must follow the same procurement rules that its SFA members would have followed
- Cooperative Buying Group
 - An existing public, for-profit, or non-profit buying group
 - Usually requires payment of a fee to become a member
 - Purchase of a membership may create a contractual relationship

Food Service Management Companies (FSMC)

Under an agreement with the State Agency, SFAs are responsible for operating the Child Nutrition Programs within their districts. A SFA may contract with a FSMC to assist in the food service operation.

Should an SFA Contract with a FSMC?

- First consider the
 - Financial
 - Administrative
 - And operational activities that will be affected

The SFA should allow sufficient time to identify and analyze these issues prior to contracting or issuing a RFP. The SFA should also conduct an analysis to:

- Identify the current cost of operating a food service
- Determine all cost elements which will be affected by contracting with a FSMC
- Analyze all non-fiscal aspects of the current food service
- Identify the functions that might be contracted to the FSMC

The SFA Responsibilities that cannot be delegated to a FSMC are as follows:

- Signature Authority
- Free and Reduced Price Meal Process
- Control of the non-profit school food service account and the overall financial responsibility for the Child Nutrition Programs
- Development of the 21-Day cycle Menu (with exception)
- Title to all USDA Foods
- Conducting monthly Claim for Reimbursement edits and submitting claims
- Monitoring
- Health Certification

SFA Responsibilities

- Contact WDE to receive guidance before considering a Food Service Management Company (FSMC).
- The SFA **must** use the State's FSMC prototype RFP and contract. Written approval from WDE must also be received for all RFPs, and contracts before issuance.
- FSMC solicitation documents must be received by WDE for review no later than **March 1st of the current school year**.
- WDE is to review and approve all contracts and contract amendments prior to execution. **Due dates for FSMC contracts and amendments is June 1st of the current school year.**
- The SFA is allowed up to four contract amendments or less if required by WDE.
- SFAs must adhere to all WDE and USDA FSMC requirements.