POWER in NUMBERS

Group Purchasing for Healthier School Meals

Founded by the American Heart Association and the Clinton Foundation
Schools across the country are trying to serve healthier meals at more affordable prices. One strategy school food authorities (SFAs) are using to increase their buying power is to enter into cooperative purchasing arrangements with one another, other institutions, and purchasing organizations. As stated by the School Nutrition Association:

There is power in numbers. Many school districts—particularly those that are small or rural—are banding together to form purchasing cooperatives. By working together in a cooperative, the districts can leverage their collective buying power to purchase food and supplies at significantly less cost for all participants. ²

**DIFFERENT TYPES OF GROUP PROCUREMENT**

There are three main types of group purchasing arrangements that SFAs are using to leverage their buying power. The following descriptions are adapted from the National Association of State Procurement Officials’ (NASPO) classification system ³:

1. **GROUP PURCHASING ORGANIZATIONS:** A third-party organization brings together multiple entities (including schools) and helps manage the issuance of bid packages/requests for proposals and the award of contracts. These arrangements are known by a number of different terms, including “third party providers,” “third-party aggregators,” “group buying organizations,” and “group buying services.” GPOs may be private (for-profit) or nonprofit in nature. Business models vary and may require the collection of membership or administrative fees. GPO services require public entities (i.e., SFAs) to enter into contractual relationships with them, and applicable laws require that public entities, like SFAs, competitively procure the GPO’s services as a procurement agent or servicer.
2. **“TRUE COOPERATIVE” PROCUREMENT:** Two or more public entities (such as schools) combine their purchasing requirements and collectively issue a bid package for goods or services. When this approach is used in the context of school meals, it has been called the “true cooperative purchasing model,” and is often authorized by joint exercise of powers legislation. (Please see “USDA and cooperative purchasing” and “Exceptions for ‘true cooperatives’ comprised solely of SFAs” sections below for further information).

3. **PIGGYBACK PROCUREMENTS:** One or more public entities (usually of a large size or purchase volume) secures a contract with the express understanding that the contracted goods or services may also be extended under the same terms to other schools and public entities that “ride” the lead contract. Please note that a piggyback procurement does not necessarily mean that the parties are intending to enter into a cooperative agreement—which usually involves a stronger sense of shared mission, intent, or goals. (Please see “Rules for ‘piggybacking’” section below for further information).

**BENEFITS**

SFAs enter into cooperative purchasing arrangements for many different reasons. The ultimate goals are to obtain:

- the **best products**
- at the **lowest prices**
- in the **easiest** way

Essentially increased competition fuels better products, lower prices, and more thought about how buying is done. As an example, GPOs offer schools the potential benefit of increasing their buying power and saving time. GPOs have been successful at consolidating buying power in other institutional food service settings, such as hospitals, healthcare facilities, and universities. Experts estimate that schools using GPOs may see savings of 10 to 20 percent in their food and beverage purchases. The Alliance for a Healthier Generation has resources about the commitments that their partner GPOs have made to use their buying power to make healthier products more affordable for schools.
THE USDA AND COOPERATIVE PURCHASING

In practical terms, this means that under federal law a school district can join a GPO, but must still issue informal or formal solicitations (depending on the dollar threshold under federal and state regulations) and consider both GPO-provided bids and bids from outside the GPO. The USDA has clarified this further in its memo Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc. (“June 12, 2012 USDA memo”):

All SFAs must follow Federal Procurement regulations when entering into contractual agreements with entities for goods or services. As a result, SFAs are required to conduct procurement transactions in a manner providing full and open competition, in accordance with Federal regulations at 7 CFR 210.9, 210.21 and 3016.36(c). Those requirements apply when an SFA seeks the services of an entity such as a purchasing cooperative, group purchasing organization or group buying organization, or an entity offering to facilitate access to those types of entities. This is true even when services are offered free of charge. Competition ensures the best quality product or service at the lowest price. Therefore, the SFA should always seek advice from the SA [state agency] before agreeing to use any services without conducting a competitive procurement.

EXCEPTIONS FOR “TRUE COOPERATIVES” COMPRISED SOLELY OF SFAS

According to USDA, SFAs “may participate in a cooperative comprised solely of SFAs without conducting a competitive procurement if the local cooperative was created by SFAs banding together to form a cooperative in order to increase purchasing power.” This exception applies to a very specific subset of “true cooperative procurement” arrangements mentioned above (i.e., true cooperative procurements comprised solely of SFAs), and does NOT apply to GPOs, piggyback procurements, or cooperatives that contain a party that is not an SFA. Products and services procured by SFAs in this cooperative group must be made in compliance with Federal procurement regulations.
RULES FOR “PIGGYBACKING”
SFAs may join or “piggyback” onto an existing agreement between a state agency or local government entity as a provider of goods and services, but only if the existing agreement was procured consistent with applicable Child Nutrition Program regulations. The SFA is nonetheless responsible for reviewing the solicitation issued by the already contracting government entity to ensure compliance with CNP regulations. The contracting government entity (e.g., State agency or SFA) is also responsible for ensuring that the “piggybacking” does not create a “material change.” For example, adding four new school districts to an existing agreement may significantly increase volume, thus impacting price; this would be considered a material change and a new solicitation would be warranted. For further information, see the June 12, 2012 USDA memo.¹⁰

COOPERATIVE PURCHASING UNDER STATE LAWS
The availability of cooperative purchasing arrangements differs from state to state, but most states have some statutory or other legal authorization for cooperative purchasing.¹¹ Some aggregators, both for-profit and non-profit, maintain online resources with 50-state overviews of state authorizations for cooperative purchasing, although SFAs and other interested parties should always verify accuracy, comprehensiveness, and applicability of these overviews with their purchasing specialists, state agencies, and counsel.¹² Contact your state agency for further guidelines.¹³

USDA RESOURCES
USDA Training Series
Memorandum from U.S. Department of Agriculture to Regional Directors of Special Nutrition Programs and State Directors of Child Nutrition Programs, Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc. (June 12, 2012) Memo Code: SP 35-2012.

USDA Food & Nutrition Service’s Online Procurement Training Guide
Helps State agencies administer school meals programs.
AVAILABLE AT: www.nfsmi.org/Templates/Template Default.aspx?qs=cEIEPTezNQ
FREQUENTLY ASKED QUESTIONS

Q: Can a GPO assume a school’s responsibility (per federal regulations) for conducting a competitive bid process when it is buying school food?

A: GPOs may offer a number of tools, resources and purchasing avenues to help SFAs conduct procurement more effectively and efficiently. However, the ultimate responsibility to undertake informal/formal procurement efforts remains with the schools and SFAs when procuring GPO services. In addition, the SFA may competitively solicit the services of an agent to procure on its behalf as long as the SFA and contracted service ensure compliance with applicable regulations.

Q: Who can participate in a private GPO or Co-op?

A: Any SFA can participate in these cooperative purchasing arrangements, as long as they realize they themselves are ultimately responsible for compliance with federal, state, and local laws and regulations. Such compliance includes competitive procurement of the GPO’s services. A number of organizations can help guide SFAs (see Resources in the sidebars), but SFAs should ultimately check with their state agencies, purchasing directors, and local legal counsel.

Q: What does it cost?

A: Many GPO and cooperative purchasing arrangements involve no upfront costs or fees. Some have a small fee based on volume purchased during the year. This fee may be charged directly to the SFA or to the distributors on a fee per case basis. Even if a GPO’s services are free (or nominal), there is an exchange of value that needs to be considered in the competitive bidding process. SFAs should also recognize that applying fees to a distributor may ultimately be passed on to the SFA, through costs charged by case to allow the distributor to recoup the fee. Potential costs must be clearly identified in the provisions of the solicitation and subsequent contract (including the reconciliation of administrative fees and ensuring that

OTHER RESOURCES

(Some sites require registration)

School Nutrition Association’s Supply Chain Toolkit
including Annual Purchase Plan template, budget calculator and timeline for efficient procurement
AVAILABLE AT: http://procurement.schoolnutrition.org/

The Alliance for a Healthier Generation’s Save Money by Increasing Your Buying Power:
AVAILABLE AT: https://schools.healthiergeneration.org/wellness_categories/healthy_cafeterias/procurement/

National Farm to School Network
AVAILABLE AT: http://www.farmtoschool.org/

School Food Focus
AVAILABLE AT: http://www.schoolfoodfocus.org/

ChangeLab Solutions
AVAILABLE AT: http://www.changelabsolutions.org
rebates, discounts, and credits) and structured for maximum transparency, monitoring, and returning to SFAs (see Questions for GPOs and Co-ops below).

Q: Can you use a buying group and still purchase products from local farmers and producers?

A: With most GPOs and Co-ops, SFAs can participate in local food initiatives as part of their procurement. This allows SFAs to participate in farm-to-school and other initiatives that encourage relationships with local farmers, manufacturers, and distributors. If SFAs are interested in making local food purchases part of their procurement, they should make these requirements part of their stipulations in the solicitation and in the subsequent contract provisions, so that it is part of the criteria used to determine the responsible bidder with the lowest price. Furthermore, it should be noted that SFAs (or the entity competitively procured to buy on behalf of the SFA) is authorized to define the term “local.”

QUESTIONS & CONSIDERATIONS FOR GPOS AND CO-OPS

School food authorities can weigh the following considerations when assessing information about GPOs—either when discussing potential membership or developing a competitive solicitation/reviewing a competitive bid—or even use these as questions when finding out more about “true cooperative” options:

1. FEES & SAVINGS
   a. Is there a fee to join or use the services?
   b. If so, what is the fee and what is it used for?
   c. What is the business model for making revenue?
   d. In other words, are manufacturers charged an administrative fee and/or is money made a percentage of sales volume?
   e. How can the program save my school money?
f. Based on my purchasing history, how much money can I expect to save?

g. Are there circumstances under which special reduced pricing and/or rebates are offered to members?

h. How are credits, rebates, and discounts monitored and returned to the SFA?

2. COMPETITIVE PROCESS

a. Is it understood that ultimately it is the school’s responsibility to follow federal, state, and local procurement and bidding regulations?

b. Is there documentation and sharing of purchasing processes with schools in a manner that can facilitate verification that solicitations comply with federal and state procurement and bidding requirements?

c. How is this done?

3. SERVICES OFFERED

a. Does the program provide price comparisons?

b. Do the price comparisons include tools to help schools analyze the prices they are getting on all products, not just on a sampling of items?

c. Do the price comparisons allow schools to analyze prices at both a line-item and aggregate level?

d. Does the service provide transparency so that schools can see what prices they are getting for all products, not just a subset of items?

e. Is there an online tool that streamlines the procurement process and help schools plan, bid, identify, and purchase healthier products?

f. Are there online or in-person training programs, menu planning, and cooking techniques and recipes?

g. Are there tools to help schools analyze data to make business decision based on the data?

4. LOCAL SOURCING OPTIONS

a. Are schools able to purchase from local growers, producers, and suppliers?

b. What sourcing options are there to enable schools to purchase from local growers, producers and suppliers?

c. What kind of relationships are there with local producers and suppliers?

d. How does seasonality and supply affect the ability to obtain food from local growers and producers?

e. [If seasonality is an issue] Is there a supply of frozen local produce all year round?

f. [If so] What frozen local produce is offered all year round, and what is the time period of picking and process of freezing?
This fact sheet was written by Quang H. Dang, a program director and senior attorney at ChangeLab Solutions, in partnership with Elizabeth Vegas and Laura Hatch from the Alliance for a Healthier Generation. Numerous interviews were conducted with school food authorities, group purchasing organizations, the USDA, and other purchasing experts for clarification on the rules regarding group purchasing and the effect they have on schools. This research was supported in part with funding from the Robert Wood Johnson Foundation.

School Nutrition Supply Chain Toolkit: A Guide to Efficient Supply Chain Management. 2009. This toolkit provides an excellent overview of the school nutrition “supply chain” and how to establish goals and objectives, conduct menu development, conduct procurement, assess results, and analyze value. Links are also available to tools such as an “Annual Purchase Plan Template” and “Sample Timeline for Efficient Procurement,” as well as a glossary of key terms and additional web resources. http://home.esweb.net/sites/cns/Reference%20Information/BIDDING%20GUIDANCE/SNA%20Supply%20Chain%20Toolkit.pdf


See Memorandum from U.S. Department of Agriculture to Regional Directors of Special Nutrition and Child Nutrition Programs, Procurement Questions (October 9, 2009) (on file with ChangeLab Solutions), available at http://education.state.mn.us/mdeprod/groups/Nutrition/documents/Memo/003625.pdf (“SFA’s [school food authorities] are not prohibited from purchasing from a buying organization or group, as long as they comply with the government-wide procurement rules at 7 CFR 3016 and 7 CFR 3019.”).


The USDA explains that a cooperative comprised solely of SFAs “would not need to undertake a procurement because the cooperative is designed to act on its own behalf. A cooperative would follow Federal procurement regulations when procuring goods and services for its members. In other words, a cooperative that is comprised of solely SFAs procuring as a collective group of SFAs must procure in the same manner as an individual SFA.”

School Food Authorities seeking to take advantage of this exception cannot assume that a “true cooperative” is comprised solely of SFAs. According to USDA, “if the cooperative contains a third party that is not an SFA, this generally means the SFA cannot join the cooperative without conducting a competitive procurement.”

Id. 2.

