



State of Arizona  
Department of Education

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USDA SP 35-2012

MEMORANDUM

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**To:** National School Lunch Program (NSLP) Sponsors

**From:** Mary Szafranski, Deputy Associate Superintendent  
Arizona Department of Education, Health & Nutrition Services

Cara Peczkowski, Director  
Arizona Department of Education, School Nutrition Programs

**Date:** June 18, 2012

**RE:** Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.

*Original Signed*

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School food authorities (SFA) have recently brought to our attention that entities that self-identify as purchasing cooperatives, group purchasing organizations, and group buying organizations, etc., often, in their offer to help SFAs connect with other entities such as purchasing cooperatives and the like, represent to SFAs that it is not necessary to undertake formal procurement efforts in order to retain the entities services. In response SFAs' requests for guidance, this memorandum outlines applicable regulatory provisions and principles applicable to SFAs seeking the services of such entities.

Competition is Key

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 Arizona Department of Education (ADE) before agreeing to use any services without conducting a competitive procurement.

### Cooperatives and SFAs

An SFA 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. An SFA 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.

However, SFAs must be careful not to assume that a cooperative is comprised solely of SFAs that act on their own behalf. For example, 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.

### Intergovernmental Cooperation and “Piggybacking”

Intergovernmental agreements can benefit SFAs. However, an SFA may only enter into an intergovernmental agreement with a local governmental agency which allows the SFA to join or “piggyback” onto an existing agreement between that local governmental entity and a goods or service provider when that agreement was procured consistent with applicable Child Nutrition Program (CNP) regulations. An SFA should carefully review the solicitation issued by the local governmental agency and the resulting contract to ensure compliance with applicable CNP regulations and to ensure that the additional scope in services does not create a material change.

Obtaining documentation from the parties involved in the existing contract in order to ensure the return of discounts, rebates, and other applicable credits in addition to compliance with other federal requirements is key. For example, an SFA may “piggyback” a local governmental entity’s (e.g., public university, public agency, etc.) procured cost reimbursable contract if the original contract between the local governmental entity and contractor (e.g., prime vendor, distributor, etc.) contains program requirements pertaining to the return of discounts, rebates, and other applicable credits to the SFAs nonprofit food service account. With that in mind, an SFA may consult their own counsel to ensure that any existing contract will ensure access to all records, reports, and documents to ensure that rebates, discounts, and other applicable credits accrue to the SFA.

Finally, material changes to the existing contract may arise as a result of the “piggybacking” because the parties to the existing contract may not have anticipated the increased quantity of goods and services necessary to fulfill the needs of the SFA. Consequently, a local



governmental entity may have to rebid at the next juncture because of these material change issues.

SFAs should seek guidance from the ADE prior to executing an intergovernmental agreement with a local governmental entity which allows the SFA to “piggyback” onto an existing contract. If you have any additional questions or concerns about this memorandum, please contact the Contracts Management Officer, Ellen Pimental at (602) 542-6208 or email her at [Ellen.pimental@azed.gov](mailto:Ellen.pimental@azed.gov).

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