



# Collective Purchasing of Food

## *for Federal School Nutrition Programs*

Federal school nutrition programs are increasingly seen as a critical component in national efforts to reduce childhood obesity. At the same time, school officials are faced with a complex system of legal requirements and practical challenges to getting nutritious food on children's trays. *Collective purchasing* can be an effective tool through which individual schools can leverage their purchasing power with other schools to lower prices and streamline the contracting, purchasing, processing, and distribution of food served as part of federal school nutrition programs. This fact sheet provides an overview of collective purchasing approaches used by schools in the operation of federal school nutrition programs.\*

### How Do School Food Authorities Purchase Food for School Nutrition Programs?

School food authorities (SFAs) purchase food or services for school nutrition programs through direct or collective purchasing.

*Direct purchasing* is a method through which SFAs contract directly with food suppliers (i.e., without the help of collective purchasing agreements or food service management companies). These suppliers could be local, regional, or national companies or individual farmers. Food suppliers could also be food producers, manufacturers, or distribution companies. School food authorities typically purchase food directly from food handlers or distributors.

*Collective purchasing* is a method through which multiple SFAs come together and purchase as a

### SCHOOL FOOD AUTHORITY

A *school food authority* (SFA) is the governing body responsible for the administration of federal school nutrition programs in one or more schools. A school food authority has the legal authority to operate the federal school nutrition program.

**Sources:** 7 C.F.R. §§ 210.2, 215.2, 220.2, 225.2 (2012); 42 U.S.C. 1761(a)(8) (2006); 77 Fed. Reg. 10992 (Feb. 24, 2012) (to be codified at 7 C.F.R. § 211).

group rather than making purchases individually. Collective purchasing allows SFAs to obtain greater buying power and lower prices than they would have when buying on their own.

School food authorities must follow federal and state procurement standards when using either direct or collective purchasing. If an SFA enters a contract with a third party such as a *group purchasing organization* or a *cooperative*, they must

still follow any applicable procurement standards when procuring the services of that third party, and must ensure that the contract adheres to all federal standards concerning the financial management and operation of the program.<sup>1</sup>

## PROCUREMENT STANDARDS

The term *procurement standard* refers specifically to the standards schools are legally required to meet when purchasing food or services for use in school nutrition programs. Schools must follow both federal and state procurement standards. If there is a difference between a state or federal procurement standard, the school must follow whichever standard is strictest.

**Sources:** 7 C.F.R. § 3016.36 (2012); 42 U.S.C. § 1760(n) (2006).

### How Can SFAs Enter into Collective Purchasing Arrangements?

*Joint powers agreements* allow SFAs to purchase food collectively with other SFAs so long as the food is purchased according to federal and state procurement standards.<sup>2</sup> A school food authority's *joint powers authority* comes from state law that gives public entities, such as local educational agencies or school

districts, the authority to enter into agreements and contracts with vendors on each other's behalf.<sup>3</sup> All states have some version of a joint powers law, although the scope of the authority varies by state.

Joint powers agreements can result in less paperwork and faster turn-around time since there are fewer bids and contracts for an SFA to manage.<sup>4</sup>

## LOCAL EDUCATIONAL AGENCY

A *local educational agency* is the public board of education or other public or private nonprofit authority created under state law to provide administrative control or other services for public or private nonprofit elementary schools or secondary schools within a state.

**Sources:** 7 C.F.R. §§ 210.2, 215.2, 220.2, 225.2 (2012); 77 Fed. Reg. 10992 (Feb. 24, 2012) (to be codified at 7 C.F.R. § 211).

### Minnesota Joint Powers Authority

The Minnesota Joint Powers Act allows school districts and other specifically identified government entities to jointly exercise the governmental powers and functions each has individually.<sup>5</sup> Accordingly, under Minnesota law, two or more school districts may enter into agreements to purchase specific items and increase efficiencies in the delivery of administrative services and reduce costs.<sup>6</sup>

## How Do SFAs Work with Food Vendors to Purchase Food?

Under direct purchasing and collective purchasing, SFAs purchase food or services either through an *invitation or request for bid* (IFB or RFB) or a *request for proposal* (RFP). An invitation for bid is used when the bid will be evaluated on price alone. When issuing an IFB, an SFA can create a highly specific list of products, and the bidder that can provide those exact products at the lowest price is awarded the contract.<sup>7</sup> In contrast, an RFP is used to obtain a proposal from a supplier that includes subjective criteria in addition to price. These requests are usually less specific than IFBs, and allow the bidder to describe the approach they will take to accomplish a task set out in the RFP.<sup>8</sup> With an RFP, an SFA can create its own scoring system to evaluate proposals using variables important to that particular contract, although price has to have the highest number of potential points among all the variables considered.<sup>9</sup> These could include variables such as delivery frequency and timing, ability to provide high quality products, or ability to modify

products offered based on changes in policy or in student taste preference in addition to the price of the food.<sup>10</sup> Requests for proposals are typically issued for annual contracts that can be renewed for a set number of years.

## Why Do SFAs Use Collective Purchasing to Obtain Food for School Nutrition Programs?

Collective purchasing can help save money on both food products and delivery costs.<sup>11</sup> In 2009–2010, approximately half of SFAs were involved in some form of collective purchasing arrangement.<sup>12</sup> While smaller and more rural SFAs may gain the most from collective purchasing, the smallest SFAs (<1,000 students) are the least likely to engage in this practice.<sup>13</sup>

Some collective purchasing arrangements involve contracts with food manufacturers to obtain lower prices on specific food items; others involve contracts with food distribution companies to obtain lower prices based on the typical types and quantities of food purchased by the school.<sup>14</sup>

There can be some drawbacks to collective purchasing. Participating in a collective purchasing arrangement may reduce a school's autonomy over product specifications, decision-making, and relationships with manufacturers or brokers.<sup>15</sup> At the same time, SFAs have limited time and other resources to conduct procurement, prepare food, and serve meals, so reducing these duties may be beneficial. Accordingly, SFAs may need to balance lower prices with autonomy over these tasks.

## What Types of Collective Purchasing Do SFAs Use?

There are three distinct types of collective purchasing arrangements used by SFAs: *group purchasing organizations (GPOs)*, *state purchasing cooperatives*, and *buying groups*.



## Group Purchasing Organizations

Group purchasing organizations are national or regional private companies that deliver food to their members using *broad-line distributors*, i.e., distributors that provide a wide range of food and foodservice-related products. In general, GPOs competitively bid for contracts for many products and services on behalf of their members. Members can decide whether to participate in individual contracts.<sup>16</sup> This model can save SFAs time because the only contract they need to procure is the contract with the GPO. School food authorities must still competitively procure the services of a GPO and ensure that the GPO's contracting process conforms to federal and state procurement standards.<sup>17</sup> Group purchasing organizations have varying policies regarding membership fees, minimum purchasing requirements, and large purchasing incentives.<sup>18</sup> This model can provide substantial cost savings because food is typically purchased in large quantities from food suppliers around the country and delivered to schools in larger shipments. However, it may also limit the ability of an SFA to request products from a certain geographic location or supplier, or to determine the frequency of delivery.<sup>19</sup>

## State Purchasing Cooperatives

Some states also have purchasing cooperatives created by specific state laws to provide shared services to members. State cooperatives may be created for municipalities more generally or specifically for school districts.

## Buying Groups

Buying groups are another vehicle through which SFAs can leverage their collective purchasing power to obtain lower prices on food and services for school nutrition programs. Unlike GPOs and state purchasing cooperatives, buying groups exist when several SFAs come together to negotiate lower prices

## Minnesota State Purchasing Cooperatives

Minnesota law establishes two types of purchasing cooperatives available to SFAs: service cooperatives and the Minnesota's Cooperative Purchasing Venture. Service cooperatives perform planning on a regional basis and assist in meeting specific needs of participating governmental units which could be better provided by a service cooperative than by the members themselves.<sup>20</sup> Membership in these public service cooperatives is limited to public school districts, cities, counties, and other governmental units defined by statute.<sup>21</sup> These service cooperatives are run by a governing board of their members and have the authority to bid on behalf of their members.<sup>22</sup> Some Minnesota service cooperatives are involved in the procurement of food for school nutrition programs.<sup>23</sup> Likewise, Minnesota's Cooperative Purchasing Venture (CPV) is another legislatively created cooperative initiative that allows eligible entities to purchase goods, certain services, and utilities from contracts established by the Materials Management Division (MMD) for Minnesota state agencies.<sup>24</sup> The CPV allows eligible governmental entities, including school districts, to use these state contracts just like state agencies.<sup>25</sup>

by combining their purchasing power. The involved SFAs may share administrative responsibilities, although there may be a lead SFA that coordinates the bid and contract process for the buying group. Buying groups typically aggregate the purchasing commitments of their members and release a common RFP or IFB to food distributors or food manufacturers. The final awarded contract price is then available to all members.<sup>26</sup> Buying groups may also solicit bids

directly from food manufacturers for lower prices on individual food items.<sup>27</sup> This line-item bid model is more time intensive as it involves developing separate bid specifications and contracts for each food item. However, it also gives the group more flexibility to procure food items that are acceptable to students and meet the group's specifications.

Buying groups tend to be particularly attractive for small and medium-sized SFAs and those in rural areas, which may face higher distribution costs than larger SFAs and those in urban areas.<sup>28</sup> Combined purchasing power and larger orders can lower costs and make maintaining a rural delivery route more worthwhile to a distribution company.

## BUYING GROUPS IN MINNESOTA

Minnesota schools can participate in a number of different buying groups across the state, including some that are specific to a certain district or region (e.g., Minnetonka Public Schools ("Minnetonka 4"), Stillwater Public Schools ("Big 8"), Southeast Minnesota United Buying Group, Wadena Buyers Group, etc.), and the Minnesota School Food Buying Group (MSFBG), that is available to any school district across the state.

The MSFBG is unique in that it works directly with food manufacturers to obtain lower prices. Participant districts commit their volume for each product specification they wish to purchase, district volume is combined, and bids go out to manufacturers. Bids are awarded to manufacturers or brokers based on the lowest price of an acceptable item.

As of early 2012, the MSFBG was managed by staff at Anoka-Hennepin school district and a consultant. The group's operating budget comes from the administrative fee charged to participants, which depends on enrollment at the school district. Districts that want to join the group must sign a Joint Powers Agreement with Anoka-Hennepin, which must be approved by the school boards of both districts. Once the agreement is in place, districts may participate in any of Anoka-Hennepin's service contracts, including those for food. Since the MSFBG contracts are only with food manufacturers, participating districts maintain their own contracts with distribution companies.

**Sources:** Minnesota School Food Buying Group, <http://www.anoka.k12.mn.us/education/components/scrapbook/default.php?sectiondetailid=270782&linkid=nav-menu-container-4-258469> (last visited Jan. 31, 2013); discussions with school officials.

School food authorities use a variety of methods to purchase food for school nutrition programs. Collective purchasing, whether through a GPO, state purchasing cooperative, or buying group, can result in lower costs and fewer administrative responsibilities. As schools explore ways to serve nutritious, high quality food at affordable prices, collective purchasing agreements may be one way to meet this goal.

\* For more detailed discussion of these topics, see Mary Winston Marrow and Jennifer E. Pelletier, *Feeding America's Schoolchildren: Navigating the Complicated Legal Terrain of Federal School Nutrition Programs* (2013) at <http://publichealthlawcenter.org>. This fact sheet and accompanying report focus on food served as part of federal school nutrition programs. Food served outside of these programs, also called "competitive school food" is not specifically discussed as there are different legal and policy issues impacting this type of school food.

Last updated: January 2013

This publication was prepared by the Public Health Law Center at William Mitchell College of Law, St. Paul, Minnesota, with financial support provided by the Minnesota Department of Health and the American Heart Association through the Centers for Disease Control's Communities Putting Prevention to Work State and Territory Initiative.



This issue brief is provided for educational purposes only and is not to be construed as legal advice or as a substitute for obtaining legal advice from an attorney. Laws and rules cited are current as of the issue brief's publication date. The Public Health Law Center provides legal information and education about public health, but does not provide legal representation. Readers with questions about the application of the law to specific facts are encouraged to consult legal counsel familiar with the laws of their jurisdictions.

Copyright © January 2013 by the Public Health Law Center

## Endnotes

- <sup>1</sup> Memorandum from Cynthia Long, Director, Child Nutrition Programs, Food & Nutrition Serv., U.S Dep't of Agric. on Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc., to Regional Directors of Special Nutrition Programs and State Directors of Child Nutrition Programs (June 12, 2012) <http://www.fns.usda.gov/cnd/governance/Policy-Memos/2012/SP35-2012os%20.pdf> [hereinafter *FNS Memo: Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations*].
- <sup>2</sup> *Id.*
- <sup>3</sup> See *State Procurement Resources, National Joint Powers Alliance*, <http://www.njpacoop.org/contract-purchasing-solutions/legal-authority/state-procurement-resources> (last visited Jan. 21, 2013).
- <sup>4</sup> See *Minnesota School Food Buying Group*, ANOKA-HENNEPIN SCHOOL DISTRICT, <http://www.anoka.k12.mn.us/education/components/scrapbook/default.php?sectiondetailid=270782> (last visited Jan. 21, 2013).
- <sup>5</sup> MINN. STAT. § 471.59 (2010).
- <sup>6</sup> See MINN. STAT. § 123A.12 (2011); MINN. STAT. § 471.59 (2011).
- <sup>7</sup> See National Food Service Management Institute, *First Choice: A Purchasing Systems Manual for School Food Service* 111-112, available at <http://www.nfsmi.org/documentlibraryfiles/PDF/20111129111739.pdf> [hereinafter *First Choice*]; Center for Ecoliteracy, *Los Angeles Unified School District: A New System for Purchasing Food for School Meals 1*, available at [http://www.ecoliteracy.org/sites/default/files/uploads/shared\\_files/LAUSD\\_Procurement\\_Report\\_by\\_CEL.pdf](http://www.ecoliteracy.org/sites/default/files/uploads/shared_files/LAUSD_Procurement_Report_by_CEL.pdf) [hereinafter *A New System*].
- <sup>8</sup> See *First Choice*, *supra* note 7 at 113; Randy Jones, *Procurement for the Fresh Fruit and Vegetable Program PowerPoint presentation* (Aug. 24, 2012), available at [http://fns.dpi.wi.gov/files/fns/pdf/ffvp\\_procur1213.pdf](http://fns.dpi.wi.gov/files/fns/pdf/ffvp_procur1213.pdf).
- <sup>9</sup> See *A New System*, *supra* note 7 at 2; MINN. DEP'T OF EDUC., *Food Service Management Contracts*, available at <http://education.state.mn.us/MDE/SchSup/FNS/SNP/ProcCont/FoodServManag/index.html> (click on "2011-12 Food Service Management Contracts") (last visited Feb. 11, 2013).
- <sup>10</sup> Timothy W. Goossens, Presentation at the School Nutrition Association 65th Annual National Conference: Keys to Successful Cooperative Purchasing for Smaller Districts (July 11, 2011), available at <http://docs.schoolnutrition.org/meetingsandevents/anc2011/presentations/Monday/330-430/Keys%20to%20Successful%20Purchasing.pdf> (accessed Sept. 28, 2012); *A New System*, *supra* note 7 at 2.
- <sup>11</sup> FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., Rep. No. CN-12-SFPSIII, SCHOOL FOOD PURCHASE STUDY III: FINAL REPORT 7 (March 2012), available at [http://www.fns.usda.gov/ora/MENU/Published/CNP/FILES/SFS-PIII\\_Final.pdf](http://www.fns.usda.gov/ora/MENU/Published/CNP/FILES/SFS-PIII_Final.pdf) (accessed Sept. 28, 2012).
- <sup>12</sup> *Id.*
- <sup>13</sup> *Id.*

- <sup>14</sup> See *Minnesota School Food Buying Group*, *supra* note 4.
- <sup>15</sup> Kathleen C. Lazor, Presentation at the School Nutrition Association Child Nutrition Industry Conference: *Pro's and Con's of Co-Operative Purchasing* (Jan. 15, 2008), <http://www.schoolnutrition.org/Content.aspx?id=1408>.
- <sup>16</sup> Health Industry Group Purchasing Association, *Group Purchasing: An Examination of the growing Group Purchasing Business Models Across Multiple Industries* 1, 3 (July 2011), [http://c.ymcdn.com/sites/www.supplychainassociation.org/resource/resmgr/research/gpo\\_study\\_business\\_model.pdf](http://c.ymcdn.com/sites/www.supplychainassociation.org/resource/resmgr/research/gpo_study_business_model.pdf).
- <sup>17</sup> See, e.g., *Frequently Asked Questions About GPOs*, ALLIANCE FOR A HEALTHIER GENERATION, <http://www.healthier-generation.org/schools.aspx?id=5651> (last visited Sept. 28, 2012).
- <sup>18</sup> See, e.g., *Id.*; HPS, *Who is HPS*, <http://www.hpsnet.net/who-is-hps/> (last visited Sept. 28, 2012).
- <sup>19</sup> See, e.g., Premier, Inc., *FAQ — Premier U.S. Foodservice Purchasing Program*, <https://www.premierinc.com/costs/tools-services/targeted-communities/foodservice/uscommunities/documents/faq-us-communities-members-04-11.pdf> (last visited Jan. 24, 2013).
- <sup>20</sup> MINN. STAT. § 123A.21, subd. 2 (2011).
- <sup>21</sup> *Id.* at subd. 3.
- <sup>22</sup> MINN. STAT. § 123A.21 (2011); MINN. STAT. § 471.59 (2011).
- <sup>23</sup> See, e.g., *Cooperative Purchasing Connection*, MINN. PURCHASING COOP., <http://www.purchasingconnection.org/site/> (last visited Sept. 28, 2012).
- <sup>24</sup> MINN. STAT. § 16C.03 (2009); Materials Management Division, *Cooperative Purchasing Opportunities*, ADMIN MINN., <http://www.mmd.admin.state.mn.us/coop.htm> (last visited Jan. 21, 2013).
- <sup>25</sup> *Id.*
- <sup>26</sup> *Minnesota School Food Buying Group*, ANOKA-HENNEPIN SCHOOL DISTRICT, <http://www.anoka.k12.mn.us/education/components/scrapbook/default.php?sectiondetailid=270782> (last visited Jan. 21, 2013).
- <sup>27</sup> See, e.g., Allison Bradford, School Nutrition Association, Presentation at the 2010 Child Nutrition Industry Conference: *Minnesota School Food Buying Group (MSFBG)*, [http://www.schoolnutrition.org/uploadedFiles/School\\_Nutrition/105\\_Meetings/CurrentandPastMeetings/IndividualMeetingPages/ChildNutritionIndustryConference/SessionHandouts/CNIC2010-Purchasing\\_and\\_Operations-Bradford\\_and\\_Owens.pdf](http://www.schoolnutrition.org/uploadedFiles/School_Nutrition/105_Meetings/CurrentandPastMeetings/IndividualMeetingPages/ChildNutritionIndustryConference/SessionHandouts/CNIC2010-Purchasing_and_Operations-Bradford_and_Owens.pdf) (last visited Sept. 28, 2012).
- <sup>28</sup> Personal communication with Minnesota school food service directors (Dec. 2011) (on file with the Public Health Law Center).