

Chapter 13: Procurement & Ethics

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Procurement, is defined as the process of acquiring goods or services by purchase, barter, exchange, or lease.

All School Food Authorities (SFAs) and food service management companies must follow federal procurement requirements (as outlined in 7 CFR Part 210.21 and 2 CFR Part 200) unless state or local laws are more restrictive and are consistent with federal regulations.

Goals of Purchasing Regulations

Federal and state purchasing regulations are designed to help SFAs:

- Obtain the best products and services;
- Save money;
- Make the best use of federal, state and local funds;
- Provide open and free competition;
- Ensure fair and ethical practices.

Allowable Purchasing Methods

Federal regulations allow for different methods of procuring;

- Micro purchases
- Small purchases
- Formal purchases
 - Invitation for Bid
 - Request for Proposal
- Noncompetitive purchases

To determine the type of purchasing procedure to use, the SFA must evaluate the dollar value of the contract. The dollar amounts apply to all purchases from one source for one agreement/contract period. This is also referred to as “recurring purchases”.

- Micro purchase procedures may be used for purchases below \$2,500. The purchasing office must annotate the purchase requisition: “Price is fair and reasonable” and sign. The purchases must be distributed equitably among qualified supplies.
- Small purchase procedures may be used for any purchase(s) between \$2,500 and \$50,000.
 - Purchases in excess of \$2,500 must be obtained with three or more documented quotes, unless adequate public notice is provided in the South Carolina Business Opportunities publication. The lowest responsive and responsible source must be awarded.
 - Purchases in excess of \$10,000 must be obtained with written quotes, bids or proposals. The procurement must be advertised in the South Carolina Business Opportunities publication at least once. The award must be granted to the lowest responsive and responsible source.
- Formal purchase procedures must be used for procurements valued at \$50,000 or more.

Regardless of the method used, the SFA should avoid all provisions that might restrict competition or result in the SFA paying higher prices because only one or a limited number of vendors can supply the needed product or service.

The type of procuring instruments used (for example, fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the program. The “cost-plus-a-percentage-of-cost” and “cost-plus-a-percentage-of-income” method of contracting may not be used.

Micro Purchase Procedures

Procurement by micro purchase procedures are those that of lower dollar value and is declared “fair and reasonable” by the SFA’s purchasing agent.

Small Purchase Procedures

Procurement by small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than \$50,000. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

Steps for Small Purchase Procedures

1. Let potential vendor know that you want to buy one or more items.
2. Give or tell them...
 - The product specifications
 - The period of time the bid must be honored (e.g. week, month, semester)
 - General purchasing conditions
 - Other information they may need.
3. Obtain price quotes from sales representatives...
 - Verbally either in person or by telephone.
 - Preferably in writing via fax, e-mail or standard mail using a price quote worksheet or catalog.
4. Document the prices quoted.
5. Award the bid to the vendor with the lowest price for the quality specified or document your reasons for selecting a higher bid. Document reasons for rejecting any or all bids.

Formal Purchase Procedures

A formal bid is the method for contracting for goods and/or services by federal regulations whenever the aggregate purchase amount exceeds \$150,000.

Steps for Using Formal Purchase Procedures

1. Publically advertise the invitation for bids (IFB) or request for proposals (RFP).
2. Advertise for potential bidders and give them adequate time to respond. The SFA must also advertise on South Carolina Business Opportunity (SCBO).
3. In the IFB or RFP, include specifications, general and specific purchasing terms and conditions, length of contract, and instructions.

4. Open publically at time and place stated in the IFB or RFP with at least 2 SFA employees present.
5. Bids may not be accepted if not sealed or they arrive later than time stated for acceptance of bids.
6. Notify, in writing, the winner of the bid (the one with the lowest firm fixed-price that met all requirements). If award is made on basis other than lowest price, specifically document why the lowest price was not accepted. (e.g. quality, taste test, etc.)
7. Any or all bids may be rejected if they do not meet the terms of the IFB or RFP.

Noncompetitive Purchase Procedures

Noncompetitive purchase procedures are commonly referred to as “sole source” or “single source”. All noncompetitive purchases must have a justification. Justification may include but not be limited to documenting research of similar products, public advertising with only one response, or if an emergency procurement is needed. Approval must be documented with all noncompetitive purchases.

Purchasing Regulations

Geographic Preference

SFAs are prohibited from purchasing goods or services from a vendor based solely on their geographic location (7 CFR Part 210.21). This regulation is known as “geographic preference.”

The **only** exception to this regulation is when purchasing **unprocessed** agricultural products. The Food, Conservation, and Energy Act of 2008 amended section 9(j) of the National School Lunch Act to allow and encourage institutions operating the Child Nutrition Programs to apply an optional geographic preference when purchasing unprocessed locally grown and locally raised agricultural products.

Geographic preference may **not** be applied to agricultural products that have significant value added components including those that have been:

- Cooked,
- Seasoned,
- Frozen,
- Canned or
- Combined with any other products.

The U.S. Department of Agriculture defines “unprocessed agricultural products” as agricultural products that retain their inherent character. Therefore, the geographical preference **may** be applied to agricultural products with minimal handling and preparation required to make the product useable including the following:

- Washed produce,
- Bagged produce,
- Chopped, cut, sliced, diced, or shucked products,
- Produce with minimal preservatives,
- Butchered livestock, fish, and poultry,

- Pasteurized milk (this is the only type of dairy product for which geographic preference may be used), and
- Eggs in a carton.

The effects of the following handling and preservation techniques shall not be considered as changing the agricultural product into a product of a different inherent character.

- Refrigeration, cooling, and freezing,
- Drying/dehydration,
- Application of high water pressure or “cold pasteurization”,
- Vacuum packing and bagging (such as placing vegetables in bags),
- Size adjustment through size reduction made by peeling.

Contracting with Small and Minority Firms

Positive efforts shall be made by each SFA to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for procurements to be performed with program funds.

Contract Content

Contracts shall be made by SFAs only with responsible suppliers who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources and accessibility to other necessary resources.

In addition to provisions to define a sound and complete agreement, the SFA shall include the following requirements in all contracts which it awards when the contract costs are to be borne by program funds:

Buy American Provision

Section 104(d) of the Child Nutrition Reauthorization Act of 1998 requires SFAs in the contiguous U.S. to purchase to the maximum extent practical, domestic commodities or products. The legislation defines “domestic commodity or product” as one that is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. The term “substantially” in this context means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

The Buy American Provision shall be included in bid specifications to ensure compliance and applies to all funds in the food service account and not just to federal reimbursement.

Actions that districts/SFAs can take to comply with the Buy American requirements are:

- Including a Buy American clause in all procurement documents (product specifications, bid solicitations, requests for proposals, purchase orders, etc.);
- Monitoring contractor performance;
- Requiring suppliers to certify the origin of the product;
- Examining product packaging for identification of the country of origin; and
- Asking the supplier for specific information about the percentage of U.S. content in the food product.

Debarment and Suspension

Debarment and suspension actions have received a lot of attention in the past as a result of federal and state investigations in companies involved in bid rigging on contracts. A SFA is prohibited from contracting with a company or individual that has been debarred or suspended. This prohibition does not extend to contracts in existence at the time of the debarment/suspension or to most contracts under \$50,000. Rather, it applies to new contracts and extension or renewals of existing contracts of \$50,000 or more and to contracts for audit services, regardless of amount. Furthermore, the prohibition does not apply to proposed debarments.

While a SFA is prohibited from contracting with a company or individual that has been debarred or suspended, a debarment, suspension, or proposed debarment action does not exclude a company or individual from fulfilling existing contracts involving federal non-procurement programs.

To ensure that the SFA does not enter into a contract with a debarred or suspended company or individual, each SFA must require that each responsive include a certification statement with each bid on each covered contract. The following certification statement is required in all contracts: “By submitting an offer, offeror certifies, to the best of its knowledge and belief, that the offer and/or any of its Principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency or department”. By including the certification statement, the bidder certifies that neither it nor any of its principals (for example, key employees) has been proposed for debarment, debarred, or suspended by a federal agency. Where the bidder is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to the bid.

Helpful Purchasing Definitions

Code of Conduct – Standards of conduct that shall govern the performance of the SFA’s officers, employees, or agents in contracting for payment or expending program funds. (See Form 13-A.)

Competitive Sealed Bids – One procurement option, commonly called formal bid procedure that is allowed by state and federal regulations whenever the aggregate purchase amount exceeds \$50,000.

Competitive Sealed Proposals – The competitive sealed proposal process is an alternative to competitive bidding. The terms and conditions of competitive sealed proposals are identical to those for competitive bidding except for the important difference relating to the finality of initial offers. Under competitive sealed proposals, changes in the nature of a proposal and in prices may be negotiated after proposals are opened. The competitive sealed proposal process provides for full competition among proposals and allows for negotiation with the proposer(s) to obtain the best services at the best price.

Contract - A legally enforceable agreement between two (or more) parties where each promises to do (or not to do) something. A contract is also the written document containing such an agreement.

Formal Bid – Common name for the purchase method of using competitive sealed bids. A formal bid, or competitive sealed bid, is one option allowed for contracting for goods and/or services by federal regulations whenever the aggregate purchase amount exceeds \$150,000.

Request for Proposals – A Request for Proposal (RFP) is a part of the competitive sealed proposal process. The RFP is the mechanism that generates the receipt of competitive sealed proposals. A RFP may also be used as a procurement option to generate a non-sealed competitive proposal. In this instance, a SFA may open the proposal upon receipt and begin the negotiation process for the offered goods/services.

Solicitation – The act of obtaining products, goods, or services to achieve a competitive price.

Sole Source – Sole source means there is only one source of the item and accordingly, no price competition.

Specification – A clear and simple description of an item or service that is identifiable with the current market, is capable of being checked, is fair and protective, and allows for maximum competition in purchasing. The use of clear specifications is required with any method of purchasing.

Standards of Identity – Food standards that are regulated by the Food and Drug Administration which describe the nature and character of a given term and specify the kinds and amounts of ingredients that must go into a product. The standard of identity for a specific food tells what is in it, how it is made, how the product looks and sets limits, such as fat and moisture content.

Terms and Conditions – Specific requirements that are binding upon the vendor awarded the contract and communicate the district's expectations in regard to the vendor's performance in connection with the district's purchase. Examples of food service specific terms and conditions might include inspections of wholesomeness, conditions of delivery, and requirements for packaging and provisions for making substitutions when necessary.

Additional Information

For additional information regarding specific procurement regulations and procedures, please refer to the:

- Code of Federal Regulations 7 CFR Part 210.21 and 2 CFR 200;
- South Carolina Consolidated Procurement Code; and the
- Local SFA procurement code as applicable.

Training and technical assistance with procurement issues is available from the Office of Nutrition Programs, South Carolina Department of Education (SCDE) at (803) 734-8188.

Business Ethics Overview

“Ethics” is defined as “the principles of conduct governing an individual or a group.” The human condition has historically inspired philosophers to attempt to establish a set of rules and practices to direct behavior. While there is still debate about what is “ethical” or “unethical,” this chapter will discuss regulatory definitions of acceptable and unacceptable business practices.

Fraud Statement from Federal Regulations

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under the National School Lunch Program (NSLP) and/or School Breakfast Program (SBP), whether received directly or indirectly, shall, if such funds, assets, or property are of a value of \$100 or more, be fined no more than \$10,000 or imprisoned not more than five years or both; or if such funds, assets, or property are of a value less than \$100, be fined no more than \$1,000 or imprisoned not more than one year or both. Whoever receives, conceals, or retains for personal use or gain, funds, assets, or property provided under the NSLP and SBP, whether received directly or indirectly, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties. (Federal Regulation: 7-CFR-245.12)

Food Taken From Schools

The NSLP and SBP are designed and funded to serve children in the school cafeteria. No food, not even leftover food, is to be taken from the premises. Taking food from the cafeteria may create a serious public relations problem by causing people to lose faith in the integrity of the program(s). Food may only be taken from the school for school-sponsored field trips or in connection with a school-sponsored program.

The above does not prohibit students eligible for free, reduced-price, or paid meals or adults from taking all or portions of their own breakfasts, lunches, or a la carte foods from the cafeteria or off campus if approved by the local school. Exceptions to this policy must be approved in school board meeting minutes or board policy.

Leftover food that cannot be used within the school food service operation and are safe and nutritious may be donated to a formally organized food reclamation program.

Purchasing Ethics

The competitive nature of public purchasing and the expenditure of significant amounts of public funds require that ethical standards be incorporated into all purchasing functions. Purchasing personnel and School Food Authority (SFA) staff face the difficult task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other misconduct. Numerous problems may be encountered such as:

- Employees, in an effort to get the job done successfully and on time, are tempted to avoid policies, procedures, and laws or to make their own “legal” interpretations of existing policies. Such activity, although generally well-intentioned, may cause ethical or legal problems.
- When informal purchasing procedures are used to make repeated purchases of the same items or types of items over the course of 12 months, it may appear that requirements to use formal purchasing procedures are being circumvented. This situation may occur due to lack of centralized control of the purchasing function. Although some sequential purchasing may occur using informal purchasing procedures, it is important to assure that formal purchase procedures are used when required.
- An item (usually equipment) is purchased in component parts. Component purchasing usually is an attempt to avoid bid laws or other requirements by buying an item through the issuance of multiple purchase orders for the component parts of the item versus a single purchase order for the entire item. Repeated purchases of additional optional equipment or parts after an initial purchase may create the perception of component purchasing.

The SFA should clearly communicate to all personnel policies related to:

- Dealing with conflicts of interest.
- Having financial interests in firms conducting business with the SFA.
- Accepting kickbacks and gratuities.
- Improper use of a position or confidential information.

Additionally, the SFA’s employees should be made aware of the penalties for violation of purchasing laws and ethics that may include criminal prosecution and loss of employment opportunities.

General Ethical Standards

The following section provides a brief summary of common ethical standards that should govern the conduct of employees involved in the purchasing function.

Personal Gain

It is unethical for any employee of a SFA to attempt to realize personal gain through performance of his/her duties.

Influencing Public Employees

It is unethical for any employee of a SFA to attempt to influence any public employee to breach the standards of ethical conduct.

Employee and/or Family Member

It is unethical for any employee of a SFA to participate directly or indirectly in purchasing when the employee knows, or has reason to believe that:

- The employee or any member of the employee's immediate family has a financial interest pertaining to the purchase;
- A business or organization in which the employee or any member of the employee's immediate family has a financial interest pertaining to the purchase; or
- Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment, is involved in the purchase. If an employee of the SFA has a financial interest in a purchase, that person shall abstain from discussion and decisions regarding the award of the purchase contract.

Gratuities

It is unethical (and in some cases illegal) for a SFA's employee or former employee to solicit, demand, accept or agree to accept a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or purchase request, including influencing the content of any specification or purchase standard.

Kickbacks

It is unethical for a contractor (or any person on behalf of a contractor) to make any payment, gratuity, or offer of employment as an inducement for the award of a contract.

Contract Clause

The ban against gratuities and kickbacks should be clearly stated in every contract and solicitation.

Confidential Information

It is unethical for any employee or former employee of a SFA to knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated gain of any person.

Vendor Gifts and Relations

SFA officials and employees cannot accept anything of value from a vendor, such as personal gifts or gratuities, which may be considered to have been given to influence the purchasing process. Although such practices may be legitimate and generally accepted in the private sector, giving and receiving gifts in the public sector may constitute a violation of the law.

It is good practice for a SFA to consult with its attorney and/or other legal counsel at the State Ethics Commission or the Attorney General's Office to develop policies regulating the acceptance of vendor gifts. These policies should not only conform to applicable statutes but should also reflect the SFA's philosophy regarding regulation of the acceptance of the following from existing or prospective vendors:

- Trips (including transportation and hotel rooms)

- Meals
- Tickets for entertainment
- Gifts of any value

SFAs should also be aware of the disclosure requirements regarding federal conflict of interest regulations that prohibit an employee (and members of the employee’s immediate family) who is involved in administering, directing, or authorizing federally-funded transactions from having a financial interest in a vendor associated with federally-funded transactions.

Incentives

Vendors often will make a special offer on a particular item. They might, for example, offer equipment or other prizes, or food products such as charbroiled beef patties at a much lower price that is below market value.

When a Vendor Offers Incentives

The prices paid for all purchases should be based solely on the bid offered by the responsible vendor giving the SFA the best bid prices on items meeting specifications. When “incentives,” such as prizes, equipment, etc. are offered and accepted:

- The “incentive” must in no way affect the decision to purchase.
- The “incentive” must become the property of the SFA and under no condition become the property of an individual.

Special offers often mean higher prices or lower quality or both. Frequently, special offers are offered on old merchandise that the vendor wants to liquidate.

A SFA may take advantage of “specials” under the following conditions:

When a Vendor Offers an Item at a Lower Price than the Bid Price

Once an item has been bid and the bid price accepted, the purchaser is not free to obtain additional bids or to purchase from anyone other than the vendor who has received the bid, unless:

1. The bid specified a quantity to be purchased.
2. The specified quantity will be purchased from the winning bidder.
3. The amount to be purchased is in addition to the quantity bid.

Procedures for small purchases may be used in obtaining prices on the additional merchandise, unless the additional purchases will exceed \$100,000.

When a Vendor Offers an Item Not Presently Used at a Special Price Below Market Value

All purchases under competitive bidding must be based on specifications that clearly describe the item to be purchased. If you have tried a new food product and would like to purchase it, competitive sealed bids must be obtained if purchases will be \$100,000 or more. Small purchase procedures may be used if purchases will be less than \$100,000.

Code of Conduct

Each SFA must have a Code of Conduct that covers all CNP and related personnel. The code or standard of conduct should include policies concerning conflicts of interest and prohibit school employees from soliciting or accepting gratuities, favors, or anything of monetary value from suppliers or potential suppliers. The Code of Conduct shall prescribe appropriate sanctions, penalties, or other disciplinary actions for violations by school personnel and/or suppliers. Specifically, at a minimum, the code of conduct should include the following:

- No employee of (insert name of district/SFA) shall participate in the selection, award or administration of a contract when any of the following persons have a financial interest in the firm selected for the award:
 - The employee
 - Any member of his/her immediate family
 - His/her partner
 - An organization which employs, or is about to employ, any of the above
- School employees will neither solicit nor accept gratuities, favors or any item with monetary value from vendors, potential vendors, or parties to sub-agreements including:
 - Trips (including transportation and hotel rooms)
 - Meals
 - Tickets for entertainment
 - Gifts
 - Food
 - “Prizes” for students

Employees should be given guidance about how to respond when a gratuity, favor, or item with monetary value is offered. When there is doubt concerning the appropriateness of accepting gifts, favors, etc., the employee should consider the following questions:

1. How would the public perceive this action of receiving the gift, favor, etc.?
2. Will acceptance of the gift, favor, etc. possibly influence a future purchasing decision?

For a sample code of conduct that may be used or modified for use, see Form 13-A, Code of Conduct, provided at the end of this chapter.

Procurement Review

The Procurement Review is mandated to occur once every three years by the United States Department of Agriculture. The objective of the review is to help SFAs to assist in advising SFAs with better procurement practices. Each SFA is notified prior to the review. The SFA will receive an initial letter which includes important dates and instructions for submitting the procurement code, the code of conduct, vendor paid list, and the provided procurement tool. Once these documents are submitted the reviewer will select which vendors will be pulled for the review. The reviewer will then follow up with a procurement checklist and submission date for the requested documentation. Once the documentation is received the reviewer will then evaluate the documentation and present findings to the SFA in a final report.

Important terms to know for your review

- **Procurement Code:** This is a board approved policy which governs how purchases are to be made within the LEA and/or SFA.
- **Code of Conduct:** Is often referred to as the “Conflict of Interest” or “Ethics Policy”. This is a written document which disallows certain actions which could be misconstrued as inappropriate in terms of how CN funds are used. This is often found within the procurement code.
- **Vendor Paid List:** This is a list of all vendors whom the SFA had completed transactions with during the period of review. We will request a summarized report of the total dollar amount spent with each vendor.
- **Procurement Tool:** The procurement tool has been developed by the USDA to assist in the evaluation of compliance with procurement rules, guidelines, and laws.

Code of Conduct Form 13-A

The following Code of Conduct is expected of all persons who are engaged in the award and administration of contracts supported by school Child Nutrition Program funds.

No employee, officer or agent of (name of SFA/school district) shall participate in the selection or in the award or administration of a contract supported by program funds if a conflict of interest, real or apparent, would be involved.

Conflicts of interest arise when an employee:

- Has a financial or other interest in the firm selected for the award;
- Is an employee, officer, or agent of the firm selected for the award;
- Has a member of the immediate family who is an employee, officer, or agent of the firm selected for the award;
- Is about to be employed by the firm selected for the award; or
- Has an immediate family member who is about to be employed by the firm selected for the award.

To ensure objective contractor performance and eliminate unfair competitive advantage, however, a person that develops or drafts specifications, requirements, statements or work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by the Child Nutrition Program in conducting procurement, shall be excluded from competing for such procurements. Such persons are ineligible for contract awards resulting from such procurements regardless of the procurement method used.

The (name of SFA/school district) employees, officers or agents shall neither solicit nor accept gratuities, favors, or anything of material monetary value from contractors, potential contractor, or parties to sub-agreements.

The purchase during the school day of any food or service from a contractor for individual use is prohibited.

The removal of any food, supplies, equipment or school property, such as official records, recipe books and the like is prohibited.

The outside sale of such items as used oil, empty cans and the like will be sold by contract between (name of SFA/school district) and the outside agency. Individual sales by any school person to an outside agency or other school person are prohibited.

Failure of any employee to abide by the above stated code could result in a fine, suspension, both, or dismissal. Interpretation of the code will be given at any time by contacting the Superintendent at (Superintendent's phone number). The (name of SFA/school district) will not be responsible for any other explanation or interpretation which anyone presumes to make.

Questions and Answers

Q1: May school employees purchase meals or leftover food to take home?

A1: No. Even if the money was deposited in the food service account, program regulations state that any food prepared for the Child Nutrition Programs must be consumed on school premises.

Q2: The spouse of the food service director of a SFA operating a Child Nutrition Program (CNP) has recently accepted a position as an officer in a wholesale food distributing company. Should the company be disqualified as a bidder for future contracts with the SFA?

A2: Not necessarily, but the SFA needs to be extra careful to document its entire food purchasing process. Vendor selection criteria should be as objective as possible, and the final selection should involve officials other than the food service director.

Q3: Several food companies like to give my office staff and managers Christmas gifts each year. Is there anything wrong with this?

A3: Yes. This practice should be discontinued immediately as it is in conflict with federal purchasing regulations dealing with a code of conduct. Remember that neither you nor any of your employees should accept gratuities, favors, or anything of monetary value from companies with which you currently, or could potentially, do business.

Q4: In my school system, it has been the practice for principals, teachers, school organizations and CNP staff to buy items from vendors at the bid price. Is this acceptable?

A4: No. Federal regulations require a code of conduct which states that “the SFA’s officers, employees, or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.” When a person purchases at the SFA’s bid price or any discounted price, that person is actually accepting from the vendor the cash difference between the bid or discount price and what one would have to pay for the item in the retail market. Even if the vendor were to charge the retail price, the person would still be receiving the convenience of a personal delivery and therefore would be accepting a favor from the vendor.

Q5: Does the Buy American provision apply to entities that purchase on behalf of the SFA, such as a purchasing cooperative or a food service management company?

A5: Yes. Any entity that purchases food or food products on behalf of the SFA must follow the same “Buy American” provisions that the SFA is required to follow.

Q6: Are there any exceptions to the requirements of the Buy American provision?

A6: Yes. While rare, two situations which may warrant a waiver to permit purchases of foreign food products include: 1) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and 2) competitive bids reveal the cost of a U.S. product is significantly higher than the foreign product.

Exception include:

- Bananas
- Beef extract Beef, corned, canned
- Brazil nuts
- Capers
- Cashew nuts
- Caster beans and oil
- Chestnuts
- Chile peppers
- Cocoa beans
- Coconut or coconut meat
- Coffee
- Mandarin oranges
- Olive oil Olives, green
- Pineapples
- Spices and herbs in bulk
- Sugars, raw
- Tapioca flour
- Tea, in bulk
- Thyme oil
- Vanilla beans