

# STATE OF COLORADO

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## **A Q&A FOR COLORADO SCHOOL FOOD PURCHASING**

### **SCHOOL FOOD PROCUREMENT AND GEOGRAPHIC PREFERENCE**

#### **November 7, 2011**

On February 1, 2011, the USDA released guidance<sup>1</sup> on how school food directors could apply “geographic preference” to purchase locally grown foods. In April 2011, the Department of Agriculture Food and Nutrition Service promulgated a final rule governing the application of the geographic preference option in school food procurement.<sup>2</sup>

This document provides additional explanation, background and context to facilitate the use of locally grown foods in farm to school initiatives in Colorado.<sup>3</sup>

#### **1. Q: What is geographic preference?**

**A:** The 2008 Farm Bill directed the Secretary of Agriculture to encourage institutions operating Child Nutrition Programs to purchase **unprocessed locally grown and locally raised agricultural products**. Simply put, the geographic preference helps schools purchase locally grown foods.

#### **2. Q: How can my school benefit from geographic preference?**

**A:** **Schools are now allowed to apply a local geographic preference to the purchases of unprocessed, local foods when choosing a vendor.** Serving unprocessed or minimally processed, locally grown food provides additional incentives for students, school faculty and staff to continue to choose fresh and healthy school

<sup>1</sup> SP\_18-2011. [http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2011/SP18-2011\\_os.pdf](http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2011/SP18-2011_os.pdf)

<sup>2</sup> 76 FR 22603. <http://www.federalregister.gov/articles/2011/04/22/2011-9843/geographic-preference-option-for-the-procurement-of-unprocessed-agricultural-products-in-child>

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lunches that are still affordable. The geographic preference option also allows schools to engage with and support their local communities and farmers by purchasing local foods.

**3. Q: Which programs may apply a geographic preference?**

**A:** The programs include: the National School Lunch Program, the School Breakfast Program, the Fresh Fruit & Vegetable Program, the Special Milk Program, the Child and Adult Care Food Program, and the Summer Food Service Program, and the Department of Defense Fresh Program.

**4. Q: What is “local food”? Which farms and foods may receive geographic preference?**

**A:** The farm must be “**local**.” The USDA does not define “local” but instead specifies that defining “local” is left up to School Food Authorities (SFAs),<sup>4</sup> so SFAs should define “local” in their solicitations (i.e. Invitations for Bids or Requests for Proposals).

**Only unprocessed foods** qualify under the geographic preference option. Under USDA rules, this means that agricultural products must maintain their “inherent character.” Specifically, this includes: ground beef and other ground products that do not contain additives or preservatives; frozen vegetables, including a combination of local products, such as carrots, broccoli and cauliflower; and portion sized or single-serving bags, such as apples or carrots.

The USDA has determined that canned products do not maintain their inherent character and therefore are not included in the geographic preference option.

**5. Q: Can an SFA require that food purchased for school meals be locally produced?**

**A:** No, an SFA cannot include language such as “we will only accept locally grown products” in a solicitation. Making local products a requirement can eliminate qualified bidders and this violates the “free and open competition” obligation. In other words, SFAs may only “prefer” local foods in a bidding process and may not automatically exclude non-local foods.

**6. Q: How can an SFA use a geographic preference when issuing an Invitation for Bid (IFB)?**

**A:** With an IFB, the contract is generally given to the bidder who meets the specifications and has the lowest price. According to the USDA, an SFA can give a

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<sup>4</sup> For purposes of this memo, all school food purchasing entities (i.e. school districts or any other purchasing entity) will be referred to as an SFA.

preference to locally grown products through either the specifications or the price calculation.

As part of an IFB, the SFA could write specifications that include:

- “picked within one day of delivery”,
- “harvested within a certain time period,”
- “traveled less than XX miles or hours,”

Although the IFB process doesn’t generally utilize the point system, the essence of the point system could be incorporated into the price equation. For example, if a bidder meets the geographic preference, the SFA may deduct 10 cents (instead of points) from that bid for purposes of comparing it to other bids. The bid document must clearly outline the scoring criteria and the method in which the criteria will be evaluated.

**Example of how to incorporate preference points in an IFB:**

- An SFA must clearly indicate in the IFB that it will give a certain number of “preference points” to local products, i.e. SFA will give 10 preference points to bidders who provide locally raised and grown agricultural products.
- 1 point would equal 1 cent; in other words, 10 points would translate into 10 cents.

	Bidder 1	Bidder 2	Bidder 3
Price	\$1.97	\$2.04	\$2.00
Meets geographic preference	NO	YES = 10 points (cents)	NO
Price w/ preference points	\$1.97	\$1.94	\$2.00

- Bidder 2 wins the bid.

\* **Note:** Deducting ten cents from the prices of responsive bidders that met the geographic preference **only** applies to determining the winning bidder and **would not affect the actual price paid to a bidder.**

**7. Q: Can a geographic preference be given in terms of a price percentage?**

**A:** Yes, a geographic preference may be used in terms of percentages. For example, an SFA might determine that it will purchase a locally grown product if the price of that product is no more than 10% higher than the price of a comparable non-local product. **Is there a limit on the price percentage allocated in this manner?** No, there is no limit, but under federal procurement law, the SFA cannot “unnecessarily restrict free and open competition.”

**8. Q: How much weight must be given to price when considering local bids versus non-local bids?**

**A:** There is no universal answer to this question. The USDA states that “any price preference impacts free and open competition” to some extent. But an application of a price preference “must leave an appropriate number of qualified firms, given the nature and size of the procurement, to compete for the contract.” This means that an SFA has discretion to make a reasonable judgment about how much weight to accord to price within its own particular context.

**9. Q: An SFA defined “local” as the entire State and issued a Request for Proposal (RFP). Can the SFA give a bidder geographic preference points if the bidder is incorporated outside of the State with its principal place of business outside of the State?**

**A:** Yes, geographic preference does not preclude a bidder from outside the specified geographic area from competing for, and possibly being awarded, the contract subject to geographic preference. The geographic preference applies to the unprocessed locally grown and locally raised agricultural product; it is irrelevant whether the bidder’s business is incorporated or has a principal place of business in the State.

**10. Q: Are the food safety regulations any different for local food producers with the geographic preference compared with other SFA food purchases?**

**A.** The USDA recommends that all SFAs procuring local foods check, as part of the stipulation for bids, that the food supplied has been grown under safe and sanitary conditions as outlined in the Good Agricultural Practices (“**GAP**”) specifications. Ultimately, however, food safety requirements are designed by the school districts and SFAs.

**11. Q: Is the geographic preference option available for SFAs using the “informal bidding process?”**

**A:** Yes, a geographic preference is available in this instance. The informal bidding process may be used by SFAs procuring food under the small purchase threshold of \$100,000. Purchases under this amount are not required to go through the formal bid process. **However, this threshold is oftentimes lower, as local school districts can set this amount.**

When purchasing under the small purchase threshold, **it is recommended that three quotes be recorded from eligible sources** in order to ensure free and open competition. The quality, number and type of product should be put in writing before contacting potential growers. If it is difficult to find three sources with the desired product, it is essential to document this situation.

**12. Q: Can SFAs split up purchases into smaller amounts in order to fall under the small purchase threshold?**

**A:** No, an SFA cannot intentionally split purchases in an effort to avoid more rigorous procurement standards. However, in some situations, it may be appropriate to separate particular items from overall food purchases -- for example, produce, or specific produce items, may have a limited shelf life when compared with other products.

**13. Q: What is the process for implementation of the geographic preference option in both the informal and formal bidding process?**

**A:** This chart captures similarities and differences in how the USDA describes the geographic preference option playing out in informal and formal bidding processes. All of the references refer to the February 2011 Q&A unless otherwise noted.

	Informal	Formal
Fundamental principle	Allows for free and open competition. (Q1, Q9, Q10)	Allows for free and open competition. (Q1, Q7)
Threshold	Under \$100,000 or lower if set by local school district. Splitting purchases to fall below the small purchase threshold is not allowed. (Q8, Q9)	Over \$100,000 or over minimum set by local school district. (Q9)
Method of solicitation	SFA can approach potential contractors. (Q9)	SFA must use a sealed bidding process (IFB) or a competitive negotiation process (RFP). This entails public notice of the solicitation. (October 2009 Q&A) <sup>5</sup>
How to incorporate geographic preference	So long as the SFA contacts at least three sources, it can focus only on those eligible, able, and willing to provide the locally grown food. (Q9)	Options include: <ul style="list-style-type: none"> <li>• Using specs that have the likely effect of attracting contractors who grow or raise food locally. (Q5)</li> <li>• Using geographic preference points or</li> </ul>

<sup>5</sup> USDA, "Procurement Questions" (October 2009), available at [http://www.fns.usda.gov/cnd/governance/Policy-Memos/2010/SP\\_02-2010\\_os.pdf](http://www.fns.usda.gov/cnd/governance/Policy-Memos/2010/SP_02-2010_os.pdf).

		percentages in the scoring criteria. (Q5) <ul style="list-style-type: none"> <li>Focusing on the locale in which the school is situated as a criteria of the solicitation. (October 2009 Q&amp;A)</li> </ul>
What the geographic preference applies to	The unprocessed locally grown <i>product</i> , not the primary business location of the <i>bidder</i> . (Q4)	The unprocessed locally grown <i>product</i> , not the primary business location of the <i>bidder</i> . (Q4)
Line between “preference” and “requirement”	[The USDA does not refer to this with regard to informal bids, but presumably Q3 applies.] Full and open competition must still occur whether formal or informal.	Not OK to exclude all non-locally grown food in a solicitation because this is a <b>requirement</b> , not a <b>preference</b> . (Q3)

**14. Q: How do SFAs comply with the 7 CFR 3016.36 procurement regulations for states, grantees and subgrantees free and open competition rule in the school food bidding process when using geographic preference?**

**A: 7 CFR 210.21 Procurement.** (a) *General.* State agencies and school food authorities shall comply with the requirements of this part and 7 CFR part 3016 or 3019, as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the procurement of all goods and services with nonprofit school food service account funds.

As long as an SFA follows the USDA’s guidance on geographic preference (as outlined in this memo) an SFA will be in compliance because it will not be unnecessarily restricting free and open competition.

The USDA Farm to School website provides additional examples of unallowable practices that restrict competition.<sup>6</sup> The Colorado state geographic preference law and the Colorado Procurement Handbook might also serve as resource for SFAs looking for insights about ensuring free and open competition.<sup>7</sup> But of course the state geographic preference law does not govern SFAs implementing the USDA Child Nutrition Programs, so its usefulness here is only as a model.

<sup>6</sup> [http://www.fns.usda.gov/cnd/f2s/faqs\\_procurement.htm#11](http://www.fns.usda.gov/cnd/f2s/faqs_procurement.htm#11).

<sup>7</sup> Col. Rev. St. Ann. §8-18-103; Col. Procurement Handbook § 18-26.