

Draft Procurement Language for New “Locally Grown” Regulations

Introduction

On April 23, 2024, USDA published final regulations addressing multiple changes for federally funded school nutrition programs. Among other things, this final rule codifies, without changes, USDA's proposal to expand the geographic preference option by allowing child nutrition program operators to use “locally grown”, “locally raised”, or “locally caught” as procurement specifications (a written description of the product or service that the vendor must meet to be considered responsive and responsible) for unprocessed or minimally processed food items in the child nutrition programs.

Purpose:

This procurement is designed to solicit responses from produce and other specialty and broad line distributors capable of delivering "locally grown", "locally raised," or "locally caught" "unprocessed or minimally processed foods" for School food authorities in identified markets. The resulting contracts will be for a one year term and renewable for up to an additional four years. The awarded contract(s) will automatically adjust to local market conditions in a fair and reasonable way.

For purposes of this procurement, the geographic parameters of "local" shall be as defined by the state child nutrition agency, typically within a particular state or a 250 mileage radius from school customers. Final determination can be made by computer algorithm when producer and customer delivery zip codes are compared on a web site display as further described below.

To optimize efficiencies, non-locally grown or locally grown but out of season products can be consolidated on order and delivery terms set forth.

Listing of local products

Responses will require a complete listing in a tabular format (**Appendix A**) of all such foods and a **base price** based on the mid-season price, month, and year for when those products were last available in the local market as defined geographically.

In the interest of clarity, each vendor is required to offer local products during the identified availability dates. Failure to do so will require a written notice to the school food authority at least 10 days prior to the first scheduled delivery stating the reason for the lack of availability and the suggested substituted product. . At the discretion of the school food authority, repeated failure to deliver local foods listed may result in early termination of the vendor contract and disqualification of that vendor for future procurements.

Non-Locally grown raised or caught unprocessed or minimally processed foods

Realizing the seasonal and perishable nature of many products, an additional list of non-local products (**Appendix B**) has also been requested and is subject to the Buy American provisions of CFR XXX. Availability dates for similar items form the local product list should not overlap for longer than two weeks.

Adjustment to Base Prices

Adjustment to Base Prices will be made on the 15th of each calendar month reflecting the net percentage variance between the base price and date and the current date for the Producer Price Index for Agricultural products published by the Bureau of Labor Statistics for that product group or subgroup and defined geographical region.

Operator Access to On-Line Marketplace

Vendor will provide catalogue including information product specifications, nutrients per serving, and meal pattern crediting, UPC code and an indication of the local origin of each product through a hosted web site. Vendors will also describe how availability, pricing, and order placement functions will be consolidated on a single web domain, password protected for qualified users.

Food Safety, Traceability, Product Recalls

Distributors are required to use GTIN/UPC protocols published by GS 1 for each unique product and pack size it offers. When small farmers identified as suppliers on **Appendix A or Appendix B** do not use GTIN/UPC protocols, Distributors are required to provide assistance to non-GAP Certified farmer/suppliers. Such assistance may include registration of products, applying bar code labels at distributor receiving facilities, and conducting supply chain oversight as defined in FSMA in collaboration with of farmer/suppliers.

Appendix: Description of Final Rule April 23, 2024

This final rule codifies, without changes, USDA's proposal to expand the geographic preference option by allowing child nutrition program operators to use "locally grown", "locally raised", or "locally caught" as procurement specifications (a written description of the product or service that the vendor must meet to be considered responsive and responsible) for unprocessed or minimally processed food items in the child nutrition programs. The definition of unprocessed, and the minimal food handling and processing techniques allowed within that definition, remains unchanged in this final rule ([7 CFR 210.21\(g\)\(2\)](#), [220.16\(f\)\(2\)](#), [225.17\(e\)\(2\)](#), and [226.22\(c\)\(1\)](#)). USDA agrees with comments that suggested this provision will support increased procurement of local foods by child nutrition program operators. This change may encourage smaller-scale producers to submit bids to sell local foods to child nutrition programs and may ease procurement challenges for program operators interested in sourcing food locally.

USDA will provide guidance and resources on implementing this final standard, including but not limited to: updating the geographic preference section of the *Procuring Local Foods for the Child Nutrition Programs* guide,^[158] *the Geographic Preference Fact Sheet*,^[159] and *Geographic Preference Q&As Part I*^[160] and *Part II*.^[161] These resources and guidance respond to comments citing the need for program operators to adopt a definition of "local" that will support fair and open competition in the procurement and bidding process. Updates to these resources will also help program operators choose appropriate procurement methods; conduct market research, requests for information, and producer outreach as needed; and retain appropriate documentation while implementing this final standard. USDA will continue to allow State agencies and program operators to adopt their own definition of "local" and will not prescribe a Federal definition for the purpose of procuring local foods for child nutrition programs. Program operators are encouraged to adopt definitions of "local" that best suit their distinct needs and goals, for example based on their community's unique geography and climate, the availability of local producers and manufacturers, and program participants' interest in local products.

In response to comments requesting that USDA allow procurement values beyond local, such as certified organic or certified by an independent animal welfare program as procurement specifications, USDA will clarify in updated guidance and resources that these and other similar production standards are already allowable as specifications in program operators' procurement solicitations as long as they do not overly restrict competition. USDA will also continue to provide training, technical assistance, and, under certain circumstances as available, financial support, to program operators to help them mitigate costs and other barriers to local food procurement. Since January 2021, USDA has provided:

- \$200 million for States to purchase local foods for schools through the Local Food for Schools Cooperative Agreement Program;

- Nearly \$3.8 billion in Supply Chain Assistance funds for schools to purchase domestic foods, including \$1.3 billion for SY 2023-2024;
 - \$140 million for Equipment Assistance Grants to help schools buy kitchen equipment, which can help them process local foods; and
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- \$94 million to provide children with nutritious, local foods and agricultural education through expanded Farm to School engagement.^[162]

Accordingly, this final rule amends [7 CFR 210.21\(g\)\(1\)](#), [215.14a\(e\)](#), [220.16\(f\)\(1\)](#), [225.17\(e\)\(1\)](#), and [226.22\(c\)\(1\)](#), to codify the expansion of the geographic preference option to allow “locally grown”, “locally raised”, or “locally caught” as procurement specifications. Program operators may begin implementing the expanded geographic preference option in their procurement processes immediately following this rule's effective date. Program operators remain responsible for complying with all Federal, State, and local procurement regulations. NSLP and SBP program operators' compliance with Federal procurement regulations will continue to be monitored through State agency oversight of procurement