# Geographic Preference

## Applying Geographic Preference

**Q1:** The 2008 Farm Bill amended the Richard B. Russell National School Lunch Act (NSLA) to direct the Secretary of Agriculture to encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. Does USDA define the geographic area that is considered to be local?

**A:** No, USDA does not define the geographic area that is considered to be local; the decision is left to the purchasing institution, such as a school food authority (SFA) making the purchase or the State agency (SA) making purchases on behalf of SFAs. In other words, the purchasing institutions, such as SAs, SFAs, child care institutions and Summer Food Service Program (SFSP) sponsors, may specifically identify the geographic area within which unprocessed locally raised and locally grown agricultural products will originate. The purchasing institution must not define local in a manner that unnecessarily restricts free and open competition.

**Q2:** Does the geographic preference option for the procurement of unprocessed agricultural products apply to all Federal Child Nutrition Programs?

**A:** Institutions receiving funds through the Federal Child Nutrition Programs may apply an optional geographic preference in procurement of unprocessed locally grown or locally raised agricultural products, including the National School Lunch Program (NSLP), School Breakfast Program (SBP), Fresh Fruit and Vegetable Program (FFVP), Special Milk Program (SMP), Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).

**Q3:** Can an SFA issue a solicitation that states, "We will only accept locally grown agricultural products from a State"?

**A:** No, the Federal laws allow institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring locally grown or locally raised agricultural products, as noted in the preamble of the geographic preference rule. The exclusion of all non-locally grown agricultural products is not a preference but rather a requirement of bidding and therefore is overly restrictive.

**Q4:** 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 in a procurement 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.

**Q5:** An SFA wants to issue an Invitation for Bid (IFB). How does an SFA incorporate geographic preference points into an IFB?

**A:** An IFB doesn't generally include preference points; instead, an SFA determines who is responsive based on the solicitation, and then from the responsive bidders the SFA awards the contract to the bidder with the lowest price. Therefore, it may not be feasible to incorporate "points" into an IFB in the same way as is done with an RFP. However, an SFA could write in the specifications that, for example, an apple must have been picked within one day of delivery or must have been harvested within a certain time period.

Additionally, the solicitation document must clearly outline how all bids will be evaluated, including the application of geographic preference in the scoring criteria. The following is an example of one approach on how to incorporate geographic preference points in an IFB:

> Geographic preference points in an IFB would be applied after the SFA determined the three bidders with the lowest price. The three bidders with the lowest price would be given a total of ten geographic preference points if those bidders met the geographic preference. In order to determine the winning bidder, the scoring criteria would clearly state that one point would equal one cent; in other words, ten points would translate into ten cents. If one or more of the responsive bidders with the lowest price met the geographic preference, ten cents would be taken off of their respective prices and that bidder could potentially win 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.
>
> In the following example, Bidder 2 meets the geographic preference and is given ten points which translates into deducting ten cents from Bidder 2's price. In this example, Bidder 2 still doesn't win the bid because Bidder 1 has a lower price.

| | Bidder 1 | Bidder 2 | Bidder 3 |
|---|---|---|---|
| Price | $1.97 | $2.10 | $2.03 |
| Meets geographic preference? | No | Yes (10 points) | No |
| Price with preference points | $1.97 | **$2.00** | $2.03 |

**Q6:** An SFA would like to prescribe geographic preference as a percentage in their solicitation (IFB or RFP). For example, the SFA would like to give a ten percent price

preference to bidders offering unprocessed locally grown and locally raised agricultural products. Can an SFA prescribe geographic preference as a percentage in their solicitation?

**A:** Yes, an SFA may prescribe geographic preference in their solicitation in terms of actual percentage (e.g., ten percent price preference). Geographic preference can be prescribed in terms of points or percentages. The solicitation document must clearly outline the scoring criteria and the method in which the criteria will be evaluated.

**Q7:** How many geographic preference points can an SFA assign to geographic preference? What is the maximum price percentage an SFA can assign to geographic preference?

**A:** The Federal regulations do not prescribe the number of preference points or maximum price percentage an SFA can assign to geographic preference. Generally speaking, any price preference (prescribed as points or percentage) impacts free and open competition. However, geographic preference may have a greater or lesser impact on free and open competition depending on the characteristics of the market. The SFA's application of the geographic preference option must leave an appropriate number of qualified firms, given the nature and size of the procurement, to compete for the contract, as it is imperative that the SFA does not unnecessarily restrict free and open competition.

**Q8:** Can SFAs split up large purchases into smaller amounts and thereby fall under the small purchase threshold?

**A:** SFAs cannot intentionally split purchases in order to fall below the Federal, State, or local small purchase threshold in an effort to avoid more rigorous procurement practices. However, there may be some instances in which the characteristics of a product or market support the need to separate selected products from the overall food procurement. For example, milk and bread are commonly procured separately because there are fundamental differences between them and other food products, such as shorter shelf-life, specialized pricing mechanisms, and durability. Similarly, an SFA may find that fresh produce may be considered a

separate market given that it shares similar characteristics as bread and milk, and may want to separate this procurement from their overall food procurement.

**Q9:** An SFA would like to conduct a procurement under the small purchase threshold. Can the SFA procure unprocessed locally grown or locally raised agricultural products directly from a local farmer?

**A:** Yes; however, the procurement must be conducted in a manner that maximizes full and open competition. According to the Federal regulations, the SFA can conduct a procurement under the small purchase threshold if the procurement is under $100,000 in value. States or localities may set a lower small purchase threshold and thereby impose more formal procedures. The SFAs should put the number, quality and type of goods in writing before contacting any potential offerors. When using the small purchase threshold, we recommend that at least three sources be contacted who are eligible, able and willing to provide the unprocessed locally grown or locally raised agricultural product. Contacting a minimum of three sources ensures that an adequate number of potential offerors will be afforded the opportunity to respond to the solicitation.

**Q10:** An SFA would like to conduct a procurement under the small purchase threshold. Can the SFA procure unprocessed locally grown or locally raised agricultural products directly from a teacher that works for one of the schools in the SFA's school district?

**A:** The procurement must be conducted in a manner that maximizes full and open competition. The Federal regulations prohibit an employee, officer or agent of the grantee or subgrantee (i.e., SA or SFA) to participate in the selection, award or administration of a contract <u>if</u> a conflict of interest, real or apparent, would be involved. A contract award to a teacher in an SFA's school district creates an appearance of impropriety and generates the question of whether or not free and open competition has been circumvented. Therefore, a conflict of interest, real or apparent, may be involved if a teacher that works for one of the schools in the SFA's school district is awarded a contract.

**Q11:** May an SFA give geographic preference to farmers in a neighboring country (i.e., Mexico or Canada) for foreign unprocessed agricultural products when procuring unprocessed locally grown or locally raised agricultural products?

**A:** An SFA must adhere to the Buy American clause which requires SFAs to purchase domestically grown foods to the maximum extent possible. An SFA may purchase foreign goods only if the two rare exceptions to the Buy American provision are met: (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 costs of a U.S. product is significantly higher than the foreign product.

**Q12:** A State regulation requires State governmental entities to give geographic preference to local State farmers and prescribes a method on how geographic preference can be incorporated in the State governmental entities' solicitation. Is an SFA required to follow the State's regulation on geographic preference?

**A:** No. Under the principles of federalism, a State has the right to create a regulation of this nature; however, the application of the State's regulation to the Federal Child Nutrition Programs is an entirely different matter. Please keep in mind that States cannot mandate through law or policy that institutions apply a geographic preference when conducting procurements for the Federal Child Nutrition Programs, because the National School Lunch Act (NSLA) grants this authority directly to the purchasing institution (i.e., SFA or SA making purchases on behalf of the SFA).

**Q13:** Where does an SFA go to obtain help in developing bid sheets that use geographic preference? Does USDA have examples of solicitations that use geographic preference?

**A:** An SFA should start by contacting its SA for assistance in developing bid sheets and for examples of solicitations that use geographic preference. USDA is in the process of creating

tools that will assist in this area. USDA has created an online training on procurement, *State Agency Guidance on Procurement*, that can be found at http://www.nfsmi.org. Additionally, the USDA Farm to School website (http://www.fns.usda.gov/cnd/f2s/) provides information on the procurement requirements, as well as Q&As directly related to local food purchases.

## Unprocessed Agricultural Product

**Q14:** Can an SFA apply the geographic preference option in the procurement of ground beef?

**A:** As we stated in our policy memo dated November 13, 2009, we further amended the previous guidelines regarding what is to be considered to be unprocessed locally grown or locally raised agricultural products. In our view, for the purpose of applying a geographic procurement preference in the Child Nutrition Programs, unprocessed agricultural products means only those agricultural products that retain their inherent character. Size adjustment made by grinding does not change an agricultural product into a product of different kind or character. Therefore, an SFA can apply the geographic preference option in the procurement of ground beef if no other items such as additives or preservatives are added to the ground beef.

**Q15:** Can an SFA give geographic preference when procuring a frozen bag of combination local vegetables (e.g., broccoli, cauliflower and carrots) from a bidder?

**A:** Yes, the inherent character of the vegetables is retained and not modified by freezing or combining vegetables in a bag.

**Q16:** Can an SFA give geographic preference when procuring fresh local vegetables in portion sized or single serving bags (e.g., small bags of carrots) from a bidder?

**A:** Yes, the inherent character of the vegetables is retained and not modified by placing vegetables in portion sized or single serving bags.

**Q17:** Can an SFA give geographic preference when procuring canned local vegetables from a bidder?

**A:** No, the inherent character of the vegetables is not retained because the heating process involved in canning changes the agricultural product into a product of a different kind or character.