

NYS Formal Bidding Exemptions Toolkit

May 2024

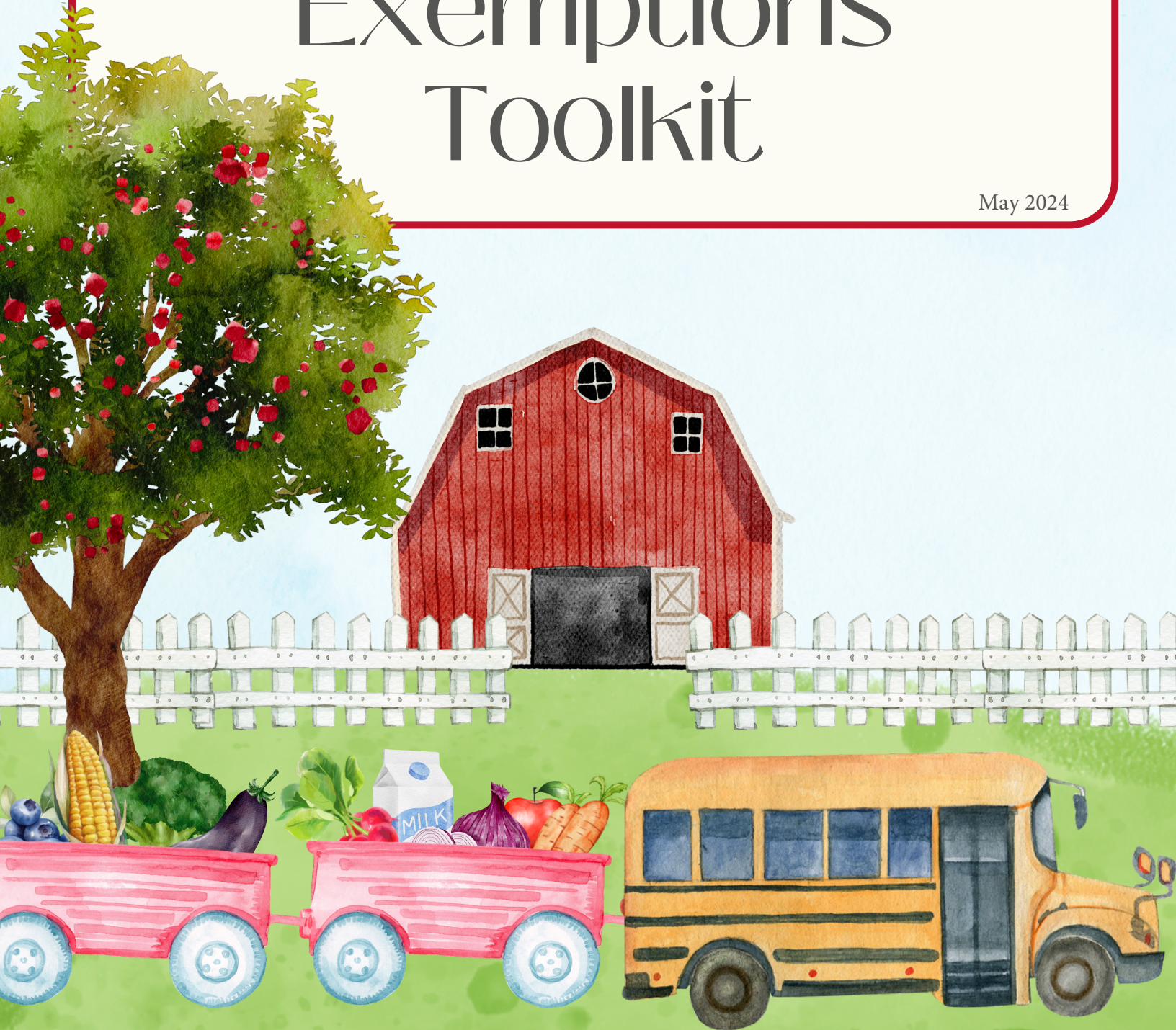


Table of Contents

- Overview • Page 2
- Exemption from Formal Bidding for the purchase of NYS Food Products • Pages 3-4
- Formal Bidding Exemption for NYS Food Checklist • Page 5
- Exemption from Formal Bidding for the purchase of NYS Milk • Page 6-7
- Formal Bidding Exemption for NYS Milk Checklist • Pages 8
- Frequently Asked Questions • Page 9
- Resources • Page 10



Salad Bar at Onteora CSD

The items portrayed in pictures throughout this document are examples of foods and beverages served throughout New York State. These pictures are not intended to endorse a specific brand or product.

Overview

The New York State Education Department (SED) and the New York State Department of Agriculture and Markets have developed this guidance for public school districts and Board of Cooperative Educational Services (BOCES) to procure New York State food products using the bidding exemptions provided in New York State General Municipal Law (GMU) 103.9, 103.10 and the Regulations of the Commissioner of Education (NY-CRR) 114.3, 114.4, as applicable. Recent statutory changes made to these State bidding exemptions are intended to expand the use of farm fresh New York products in school meal programs.

All purchases made by schools, whether funded wholly or in part with child nutrition program funds, must comply with all Federal, State, and local procurement requirements. School districts may set a lower small purchase threshold and thereby impose more formal procedures.

A review of local procurement policies is recommended to determine if the State exemptions from formal bidding can be utilized. School districts may consider amending current policies that are more restrictive in order to accommodate the use of these flexibilities.



NY Chicken Sandwich topped with NY Apples and NY Cheddar
East Rochester UFSD



NY Yogurt Tray
Greater Southern Tier BOCES



Turkey and Stuffing with NY Roasted Squash, Milk & Tomatoes
Kenmore Tonawanda UFSD



Exemption from Formal Bidding for the purchase of NYS Food Products

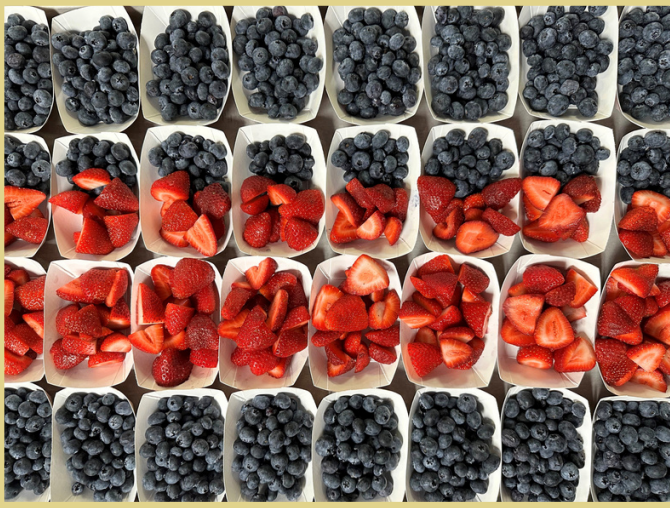
School Districts and BOCES may use informal procurement methods to separately purchase eggs, livestock, fish, dairy products (excluding milk), juice, grains, fresh fruit, and fresh vegetables that are grown, produced or harvested in New York state, **up to a maximum per order amount of \$150,000**. Processed food items may not be purchased using this exemption.

Prior approval from SED is required to use informal procurement methods for orders **over \$150,000 up to the federal small purchase threshold** (currently set at \$250,000). In these instances, purchases can only be made directly from producers or growers or an association of owners of farms, when no other producers or growers have made offers. Purchases exceeding \$150,000 from a distributor are subject to formal bidding requirements.

Allowable NYS Foods

Use the chart below to determine the allowable foods that may be purchased using this formal bidding exemption.

Food Items	Examples of Allowable Foods	Examples of Unallowable Foods
Eggs	Whole, Shell Eggs	<ul style="list-style-type: none"> • Fluid Milk • Liquid Eggs • Ice Cream • Applesauce • Meat: ground, whole, pieces • Breads, Crackers, Muffins • Pre-made/Ready to Eat Foods <ul style="list-style-type: none"> ◦ Hot Dogs ◦ Pre-made Pizza ◦ Chicken Nuggets ◦ Egg Rolls ◦ Meatballs ◦ Pre-packaged/Ready to Eat Meats ◦ Pre-packaged Sandwiches
Livestock	Farm Animal (example: Cow, Swine)	
Fish	Whole	
Dairy Products (excluding milk)	Yogurt, Cheese, Cottage Cheese, Sour Cream, Butter	
Juice	100% fruit or vegetable juice	
Grains	Wheat	
Fresh Fruits & Vegetables	Fresh (whole or cut)	



Fresh Strawberries & Blueberries
Broome Tioga BOCES

The following terms and conditions apply when utilizing this exemption. If these cannot be met, the formal bidding exemption may not be utilized.

1 Public Notice

Public notice of the intent to utilize the formal bidding exemption in a manner which will provide all producers and growers and associations of producers and growers who desire to sell to a school district an equal opportunity to do so is required.

At a minimum, the notice of intent must be provided to all producers and/or growers whose products are grown or produced upon land taxed by the school district.

Posting a notice in the local newspaper, posting an announcement on the main page of the district's publicly available website and/or providing written notice directly to area producers and growers will meet this requirement.

2 Paid Prices Must be Wholesale Price or Lower

To ensure reasonable prices are paid for items purchased pursuant to this exemption, prices paid must not exceed the wholesale prices in effect on the date of purchase.

This requirement can be met by maintaining documentation of:

1. a telephone solicitation from local wholesalers, or
2. the Fruit and Vegetable Market News published prices on the day of purchase.

Consider including this requirement in the public notice.

3 Equal Opportunity

Purchases must be divided equally among eligible vendors offering the same price for orders over \$1,000.

4 Record Retention

All records pertaining to the eligibility for and the use of this bidding exemption must be on file for **6 years**.



NY Thursdays at Hilton CSD



Cambridge CSD

Formal Bidding Exemption for NYS Foods Checklist

Step 1: Review the Local Procurement Policy

- Update local procurement policy to include formal bidding for NYS Foods, if necessary

Step 2: Determine the food items that will be purchased using the formal bidding exemption

- Allowable food items must be grown, produced or harvested in New York State and include:
 - eggs
 - grains
 - fresh fruit
 - livestock
 - juice
 - fresh vegetables
 - fish
 - dairy products (excluding milk)

Step 3: Determine the total cost of the order

- Orders of \$150,000 or less may be procured using the bidding exemption without SED approval
- Orders over \$150,000 up to \$250,000 requires SED approval

Step 4: Provide public notice of the intent to use bidding exemption

- Publish a notice in the local newspaper, or
- Provide notice in a written communication distributed directly to the growers and/or producers within the school district, or
- Post notice on the SFA's publicly available website

Step 5: Conduct informal procurement

- Procurement Guidance

Step 6: Equal Opportunity

- Purchases must be divided equally among eligible vendors offering similar products of equivalent quality at the same price for orders over \$1,000

Step 7: Prior to finalization of the purchase, ensure the prices do not exceed the wholesale prices in effect on the date of purchase by:

- a telephone solicitation from local wholesalers, or
- the Fruit and Vegetable Market News published prices on the day of purchase

Step 8: Maintain documentation to demonstrate the proper use of the formal bidding exemption

- Documentation of compliance with the public notice, prices paid and equal opportunity terms and conditions
- Allowable food items grown, produced or harvested in New York State were purchased
- Informal Procurement documentation such as: solicitation documents, price quotes, vendors contacted, and information provided by such vendors and any other relevant documentation

DiNitto Farms in Marcy, NY



Exemption from Formal Bidding for the purchase of NYS Milk

School districts may use informal procurement methods to separately purchase fluid milk produced in New York State directly from a milk processor(s) licensed by the New York State Department of Agriculture and Markets up to an amount equal to **.25 x total number of school days x total district enrollment, or the federal small purchase threshold (currently set at \$250,000), whichever is less**, in a fiscal year.

School districts must calculate the total maximum amount that may be expended using the **fiscal year prior** to using the exemption. When determining total enrollment for the calculation, the school district should use the number of students registered on the last day of the first attendance period.



Milk at Schoharie CSD

Milk Produced in New York State

Fluid milk that is at least fifty-one percent by weight or volume produced in New York state, regardless of where processed.



The following terms and conditions apply when utilizing this exemption.
If these cannot be met, the formal bidding exemption may not be utilized.

1 Public Notice

Prior to each time period to be contracted, and no less than annually, the district must notify the public of the intention to purchase milk without a competitive bid.

The public notice must appear in not less than two consecutive issues in the official newspaper designated by the district, the last notice to appear not less than 10 days prior to the award of contract(s).

2 Prices Paid

The prices paid for fluid milk purchased pursuant to the exemption may not exceed the highest price paid for milk by no fewer than two adjacent school districts.

To meet this requirement, the district must:

Secure milk price information from the adjacent school districts each September if the purchase agreement is for the school year, or each September and February if the purchase agreement is for half of the school year.

3 Equal Opportunity

Purchases must be divided equally among eligible processors offering the same price for orders over \$1,000.

4 Record Retention

All records pertaining to the eligibility for and the use of this bidding exemption must be maintained on file for **3 years**.



Milk at Schuylerville CSD

Formal Bidding Exemption for NYS Milk Checklist



Step 1: Review the school district's Local Procurement Policy

- Update local procurement policy to include formal bidding exemption for NYS Milk, if necessary

Step 2: Obtain milk price information from at least 2 adjacent school districts

- Each September, if purchase agreement is for the school year, or
- Each September and February, if purchase agreement is for half of the school year

Step 3: Determine the total amount that may be expended in a fiscal year using this exemption

- Use calculation:

.25 x total # of school days x total enrollment = Total that may be expended in a fiscal year

$$.25 \times \quad \times \quad =$$

Step 4: Determine the total dollar amount of the procurement

- Ensure the total amount expended in the fiscal year will not exceed amount in step 2

Step 5: Provide public notice of the intent to use bidding exemption

- For each time period to be contracted, not to exceed one year time period
- Publish notice in at least two consecutive issues of the official newspaper designated by the board of education
- Last notice must appear no less than 10 days prior to award of contract(s)

Step 6: Conduct informal procurement

- Procurement Guidance

Step 7: Equal Opportunity

- Purchases must be divided equally among eligible processors offering the same price for orders over \$1,000.

Step 8: Prior to finalization of the purchase, ensure the prices do not exceed the highest price paid by at least 2 adjacent school districts as obtained in Step 2

Step 9: Maintain documentation to demonstrate the proper use of the formal bidding exemption

- Documentation of compliance with the public notice, prices paid, and equal opportunity terms and conditions
- Documentation of the total calculated spending limitation
- Fluid milk produced in New York State was purchased directly from a licensed milk processor
- Informal Procurement documentation such as: solicitation documents, price quotes, vendors contacted, and information provided by such vendors and any other relevant documentation

Frequently Asked Questions

1. What steps should I take if my local procurement policy does not include the ability to use the formal bidding exemptions?

A review of local procurement policies is recommended to determine if the State exemptions from formal bidding can be utilized. School districts may consider amending current policies that are more restrictive to accommodate the use of these flexibilities. School districts should consult their purchasing department, board and attorneys, as applicable.

2. What resources are available to find local New York State products?

Cornell Cooperative Extension (CCE), Harvest NY, created and maintains a [New York Food database](#) that may be used to locate farmers/vendors of local New York State food products.

Additionally, CCE Harvest NY, created and maintains a [30% NY Eligible Product Database](#) of New York State food products that qualify for the [30% NYS Initiative](#) that is administered by the New York State Department of Agriculture and Markets. School districts should be aware that although the items on this database qualify for 30%, some items may be considered significantly processed and may not be allowed when using these procurement flexibilities.

School districts are encouraged to utilize existing farm to school contacts, liaisons, and supports in procuring New York State products. Schools districts can contact the [SED Farm to School Team](#) for assistance locating a farm to school coordinator.

3. Will SED review documentation to support the proper use of these formal bidding exemptions?

Compliance will be monitored by SED through regular program monitoring such as the required USDA procurement review. Documentation to support purchases made utilizing these flexibilities must be maintained on file in accordance with this guidance.

4. How do I request to use the Formal Bidding Exemption for NYS foods on an order above \$150,000?

Request approval from SED Child Nutrition Program office by completing this form and emailing it to farm2school@nysed.gov.

In these instances, purchases can only be made directly from producers or growers or an association of owners of farms, when no other producers or growers have made offers. Purchases exceeding \$150,000 from a distributor are subject to formal bidding requirements.



Resources

NYS Education Department

Child Nutrition Program, Farm to School Team

518-473-8781

farm2school@nysed.gov

www.cn.nysed.gov



NYS Department of Agriculture and Markets

farmtoschool@agriculture.ny.gov

<https://agriculture.ny.gov/farming/farm-school>

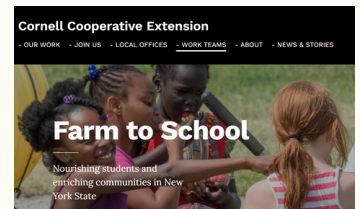
Cornell Cooperative Extension, Harvest NY Team

<https://cals.cornell.edu/cornell-cooperative-extension/work-teams/new-york-state-farm-school>

NY Food Database: NYS farmers/producers, food products available and contact information

30% NY Database: NYS products that qualify for the NYS 30% Initiative.

All products are either NY Grown & Certified or contain 51% or more raw NY product. Note: there may be significantly processed products on the database that may not be purchased under the formal bidding exemptions.



USDA Procuring Local Foods for Child Nutrition Programs Guidance

<https://www.fns.usda.gov/f2s/procuring-local-foods>

