


NUTS & BOLTS

OF SCHOOL NUTRITION PROGRAMS



School Food Service Procurement

July 31, 2019, Pete McLoughlin, Mark O'Leary



MASSACHUSETTS DEPARTMENT OF
ELEMENTARY AND SECONDARY
EDUCATION

1

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.


Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](http://www.ascr.usda.gov/complaint_filing_cust.html), (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

Massachusetts Department of Elementary and Secondary Education



2

Procurement – What's the Goal/Purpose?

- National focus on procurement policies – effort to enhance program integrity
- Training became the focal point during SY15-16 (Spring) and moving forward.
- Procurement reviews began in SY16-17

Massachusetts Department of Elementary and Secondary Education



3

Procurement for Nutrition Programs

- Why More Emphasis?
 - Because of the strong belief that the procurement process should be open to all capable contractors who want to do business with the Federal Government

and

 - if the “playing field” is level, vendor participation is encouraged,
 - the cost of products and services will be lower,
 - and better quality products and services will result



Massachusetts Department of Elementary and Secondary Education



4

Training Objectives

- Explain the procurement process and methods
- Help you learn to apply the procurement process and methods to real world situations
- Identify the regulatory requirements and how to find and apply them
- Provide a high level overview of the Procurement Review process.

Massachusetts Department of Elementary and Secondary Education



5

Procurement Regulations and Where to Find Them



CONGRESS
OMB
USDA/FNS
State
SFA

Massachusetts Department of Elementary and Secondary Education



6

Super Circular 2 CFR 200



Guidance is located in Title 2 of the Code of Federal Regulations

(formerly 7 CFR Parts 3016 and 3019 and OMB Circulars A-21, A-50, A-87, A-89, A-102, A-110, A-122 and A-133)

The Guidance:

- Published December 26, 2013
- Is in effect for all federal awards or funding increments to nonfederal entities since December 26, 2014
- Applies to nonfederal entity audits/reviews for fiscal years beginning on or after that date.

Massachusetts Department of Elementary and Secondary Education



7

Super Circular 2 CFR Part 200.317-.326

- Streamlined guidance for federal awards to ease administrative burden
- Eliminated duplicate and conflicting guidance between circulars
- Methods of Procurement 2 CFR Part 200.320
- Introduced a Micro-Purchase method (<\$10,000)
- Raised the Federal small purchase threshold to \$250,000

Massachusetts Department of Elementary and Secondary Education



8

Federal Procurement Matrix



	Informal		Formal Methods		
	Micro Purchases	Procurement by Small Purchase Procedures	Sealed Bids (IFB) (formal)	Competitive Proposals (RFP) (formal)	Non-competitive Proposals
Regulations	200. 320(a) 200.67	200.320(b) 200.88	200. 320(c)(1)(i-iii) 200. 320(c)(2)(i-v)	200. 320(d)(1)	200.320(f)(1)
Procedures in a nutshell	Purchases not exceeding \$10,000, may be awarded without soliciting competitive quotations if price is reasonable	Purchases not exceeding applicable Small Purchase Threshold (Fed=\$250,000). Minimum of three price quotes	Technical specifications Advertise bid Public bid opening Award on price alone – firm fixed price	Solicitation includes evaluation criteria. Award based on score with primary weight on price (not price alone)	Item available only from a single source; public exigency; competition deemed inadequate
SA oversight	Assurance of reasonable and necessary costs; purchases distributed equitably among qualified suppliers; Buy American; documented	Assurance of competition; Buy American; documented	Assurance of advertising, bid opening, resulting in fixed price contract (required provisions-- 7 CFR Part 210, 2 CFR Part 200, Appendix 2 Part 200)	Assurance of advertising, proper evaluation/award, results in fixed price or cost reimbursable contract (required contract provisions--7 CFR Part 210, 7 CFR Part 200, Appendix 2 Part 200) SA must assure SFA receives discounts, rebates and credits in cost reimbursable contracts	Assure adherence to 200.320(f)(1)

Massachusetts Department of Elementary and Secondary Education



State (MA 30B) Procurement Matrix



M.G.L. c. 30B – PROCUREMENT OF SUPPLIES AND SERVICES

Estimated Contract Amount	Under \$10,000	\$10,000 to \$50,000	Over \$50,000
Procurement Procedure	Sound business practices. ¹	Use a written purchase description to solicit written quotations from no fewer than 3 persons who customarily provide the supply or service. ²	Sealed bids or proposals (M.G.L. c. 30B, §§ 5 or 6).
Notice/Advertising Requirements	None.	None.	Post a notice 1) in your jurisdiction's office, and, at least two weeks before bids or proposals are due, publish 2) in a newspaper, and 3) on COMMBUYS. If the procurement will exceed \$100,000, at least two weeks before bids or proposals are due, publish in the <i>Goods and Services Bulletin</i> .
Award contract to:	Responsible person offering the best price.	Responsible person offering the needed quality of supply or service at the lowest price quotation.	Under § 5, the 'responsible' and 'responsive' bidder offering the best price. Under § 6, the most advantageous proposal from a responsible and responsive proposer taking into consideration price and non-price proposals.
Written Contract Required³	No. Keep written records as a best practice.	Yes.	Yes.
Maximum Contract Term⁴	Three years, unless majority vote authorizes longer.		
OSD Option	Yes.		

Massachusetts Department of Elementary and Secondary Education



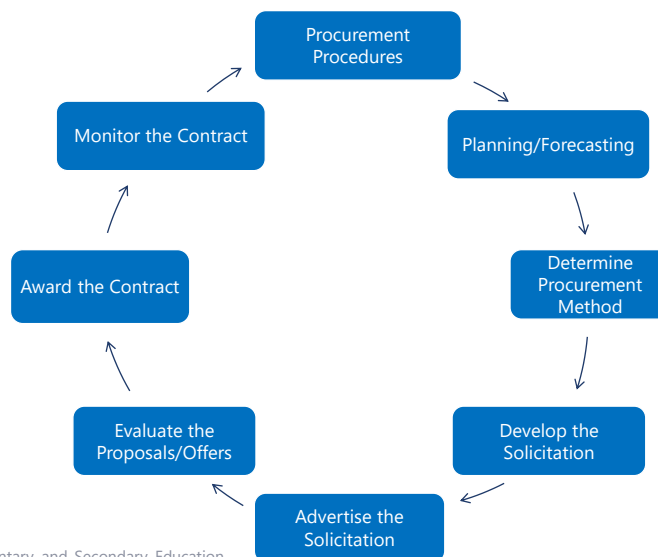
What is Procurement?



**The act of obtaining of goods or services
in exchange for money or value**



The Procurement Cycle – A Multi-step, Continuous Process



Procurement Procedures

- Why are they important?
 - Required by regulations
 - Helps to determine procurement methods to be used
 - Identifies parties that will address issues raised
 - Prohibits conflicts of interest
 - Provides written code/standards of conduct

Massachusetts Department of Elementary and Secondary Education



13

Planning/Forecasting

It makes sense that before purchasing for programs...

an SFA must plan and evaluate:

- Food service operations
- Food service needs



Massachusetts Department of Elementary and Secondary Education



14

Forecasting: Evaluate Operations

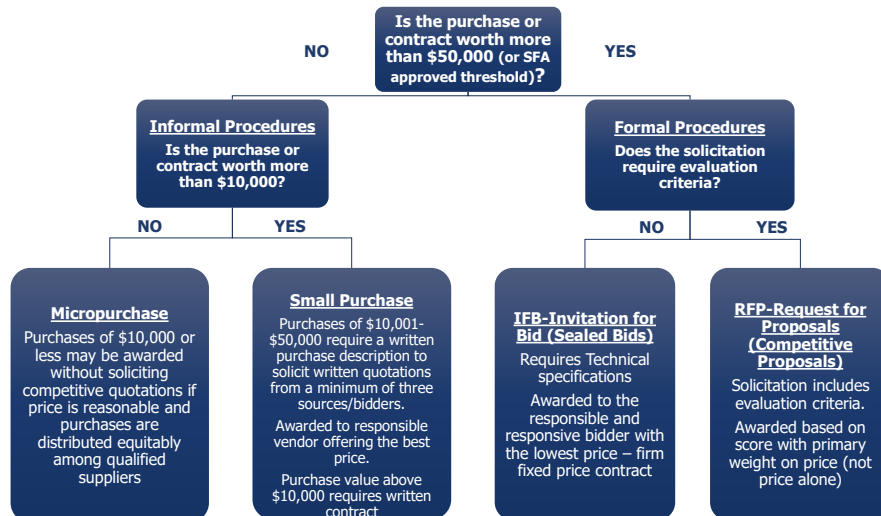
- Evaluate the current food service operation to determine needs
 - Self-Op/Central Kitchen/FSMC
 - Storage capacity
 - Processing abilities
 - Resources - financial, staff, other
 - Food safety practices
 - Prior year menus
 - Inventory



Massachusetts Department of Elementary and Secondary Education



Procurement Decision Tree - Which Procurement Method should I use?



* This diagram incorporates most restrictive regulations from Federal and MA 30B

Massachusetts Department of Elementary and Secondary Education



Micro-Purchasing

- Introduced a Micro-Purchase method from the Federal Acquisition Regulations (FAR)
 - Enables Program operators to make purchases without obtaining competitive quotations, provided:
 - Aggregate value does not exceed \$10,000 (\$2,000 if Davis-Bacon Act applies – construction); and
 - Competition is achieved by distributing micro-purchases equitably among qualified suppliers (“spreading the wealth”).

Massachusetts Department of Elementary and Secondary Education



17

Informal Procurement Method (Small Purchase Method)

- Small Purchase Method is for purchases above \$10,000 to less than or equal to \$50,000 in value (state threshold-more restrictive)
- Relieves program operators of the cost, time, and administrative complexity intrinsic to more formal procedures such as sealed bids and competitive proposals
- Competition is still required
- Competition is obtained by written price quotations from an adequate number of qualified suppliers before purchasing

Massachusetts Department of Elementary and Secondary Education



18

Formal Procurement Methods

- Value of purchase exceeds the small acquisition threshold for small purchases (\$50,000 for MA - most restrictive)
- Commonly called “formal methods”
- 2 Methods - More rigorous and prescriptive:
 - Sealed bids (IFB)
 - Competitive Proposals (RFP)



Sealed Bids (IFB)

- Used when estimated value of the contract is greater than the Simplified Acquisition Threshold (\$50,000 for MA)
- Awarded contract (purchase) is based upon lowest bid
- In order for sealed bidding to be feasible, the following conditions should be present:
 - A complete, adequate, and realistic specification or purchase description is available;
 - Two or more responsible bidders are willing and able to compete effectively for the business; and
 - The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.



Sealed Bids (IFB) (continued)

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publically advertised;
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- All bids will be opened at the time and place prescribed in the invitation for bids, and the bids must be opened publicly;
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
- Any or all bids may be rejected if there is a sound documented reason.



Competitive Proposals (RFP)

Normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded.

- Used when estimated value of the contract is greater or equal to the Simplified Acquisition Threshold (\$50,000 for MA)
- It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
 - Requests for proposals must be publicized and identify all evaluation factors and their relative importance
 - Proposals must be solicited from an adequate number of qualified sources;
 - Offers can't be opened until after a close date and time for excepting offers
 - The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered;
 - Allows for the identification of evaluation factors and their relative importance



Noncompetitive Proposals

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- After solicitation of a number of sources, competition is determined inadequate.



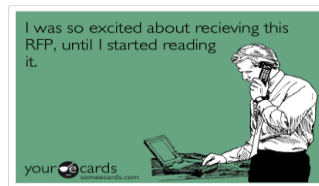
Solicitations

- Once the decision is made regarding what goods and services are needed and the appropriate method to acquire them, a solicitation must be developed which contains specifications & all necessary contract elements



Solicitation Overview

- The description and scope needs to be in line with what is being procured (i.e., procuring processor, FSMC, purchased goods through a distributor, etc.)
- Must be clearly stated so that bidders will understand and can be responsive to the need
- Identify all of the requirements that offerors must fulfill, so that changes do not need to be made to the contract after award has been made



Massachusetts Department of Elementary and Secondary Education



25

Writing Clear and Thorough Specifications



- Product Name
- Variety
- Grade
- Size
- Quantity
- Quality
- Cleanliness
- Packaging
- Delivery
- Food Safety
- Farm Practices and Characteristics
- Other requirements based on product or service

Massachusetts Department of Elementary and Secondary Education



26

Sections of a Solicitation

- Contract Type
- Introduction/Scope
- General Descriptions of Goods and Services
- Timelines and Procedures
- Technical Requirements
- Evaluation Criteria (for RFP only)

Massachusetts Department of Elementary and Secondary Education



27

Advertising the Solicitation

The content of the solicitation announcement should be sufficient enough in scope to allow bidders/offerors to identify:

- The general nature of the goods or services to be procured;
- The method of procurement that will be used (formal or informal);
- How they can obtain the solicitation or more information; and
- The due date for responses to the solicitation.

Massachusetts Department of Elementary and Secondary Education



28

Advertising the Solicitation: Due Dates

When determining due dates, keep in mind:

- Complexity of the solicitation requirements;
- Time needed for pre-bid/award meetings, site visits, etc; and
- Federal Due dates:
 - FSMC for all programs except SFSP—at least 21 days in advance of due date, but should give more (recommend 4-6 weeks)
 - FSMC for SFSP—at least 14 days in advance of bid opening, but again you should give more (recommend 4-6 weeks)
 - In absence of applicable State or local laws, other solicitations should be publicly announced at least 21 days before the response is due, unless an emergency or good cause exists for expediting the acquisition.



How to Advertise

To allow for Free and Open Competition, use the following ways to advertise your solicitation:

- State, regional, or nation-wide newspapers
- Trade periodicals
- Designated internet sites (e.g. COMMBUYS-formal, Goods and Services Bulletin/Central Register > \$100,000)
- Posted in a conspicuous location near offices
- Direct mailings (informal only)
- Other print media that serves the business community and general public



Evaluating the Proposals: Ensuring Responsive and Responsible Contractors

- Responsive
 - Vendor's products or services meets the SFA's specifications.
- Responsible
 - Vendor can and will successfully fulfill the terms and conditions of the proposed procurement.



Responsible?

Determine if a contractor is responsible by investigating the contractor's:

- Integrity;
- Compliance with public policy;
- Record of past performance; and
- Financial and technical resources

If it is determined that the contractor is NOT responsible:

- Carefully document decision
- Contractor becomes ineligible for award.



Awarding the Contract

- Legally ensures commitment
- Provides record of the deal
- Fulfills numerous regulations



"Sign here to indicate you have no idea what you've signed."

„Sign here to indicate you have no idea what you've signed."

33

Massachusetts Department of Elementary and Secondary Education

33

Basic Contract Elements

- Contract Duration
- Identification of the Contract's parties
- Scope of Work
- Product Specifications
- Type of Contract
- Renewal Options
- Modification and Change Procedures
- Default and Breach provisions, remedies, penalties
- Termination rights

34

Massachusetts Department of Elementary and Secondary Education

34

Contract Elements (continued)

- Required Compliance certifications and sanctions
- Recordkeeping requirements
- Laws and Regulations that govern the contract
- In cost reimbursable contracts, ensure that all costs are net of all discounts, rebates and credits
- Clear Methodology for tracking costs
- Any Sanitation and Licensing requirements
- Professional Certification requirements or minimum levels of experience or education

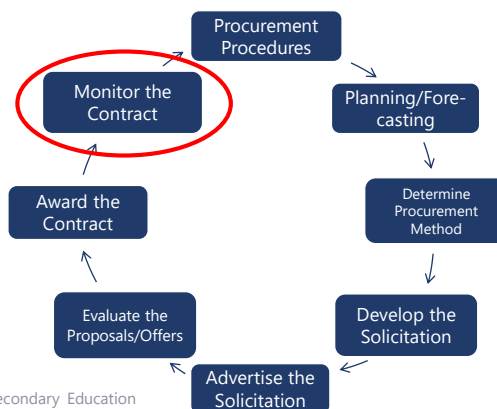
Massachusetts Department of Elementary and Secondary Education



35

Managing/Monitoring the Contract

This ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts, and allows for adequate and timely follow-up of all purchases.



Massachusetts Department of Elementary and Secondary Education



36

Managing/Monitoring the Contract (continued)

The SFA must monitor contractor performance to make sure:

- They receive the quantity and quality of the goods and services requested;
- They receive the goods and services on time; and
- They are charged the correct prices as bid and within budget.

The right products, for the right price, at the right place, at the right time, all the time...



SFA Responsibilities

Ultimately, it is the SFA's responsibility to follow each of these Procurement Process steps. The SFA is NOT to be guided by vendors' opinions or requests.



The Procurement Review - What we will look for...

- Standards of Conduct
- Written Procurement Procedures
- Methods of Procurement
 - Micro Purchasing
 - Small Purchase Procedures
 - Sealed Bids/Competitive Proposals
 - Noncompetitive Proposals
- Required contract provisions
- Contractor performance monitoring

Massachusetts Department of Elementary and Secondary Education



39

Question #1 - What Do You Think? OK?

A vendor has learned of your engagement and sends you a new house-warming gift. You take it home, and it looks beautiful on your fireplace mantle. How did he know exactly what to buy? You can't wait to thank him the next time you place an order.

Massachusetts Department of Elementary and Secondary Education



40

Question #1 - What Do You Think? OK?

No...

Solicitation or acceptance of gifts for personal gain may be considered unethical.

Refer to the school district's policy for accepting gifts. This should be contained in the District or School Food Service Code of Conduct.



Question #2

- **What determines when to use procedures below the small purchase threshold, or above the small purchase threshold? We commonly refer to these as "informal" or "formal" procedures.**
 - A. The size of my school district.
 - B. The items I'm procuring (fresh produce vs. canned or frozen food).
 - C. The services, supplies, or other property being procured do not cost more than the small purchase threshold.
 - D. Personal preference in process.



Answer #2

- **What determines when to use procedures below the small purchase threshold, or above the small purchase threshold? We commonly refer to these as “informal” or “formal” procedures.**
 - A. The size of my school district.
 - B. The items I’m procuring (fresh produce vs. canned or frozen food).
 - C. **The services, supplies, or other property being procured do not cost more than the small purchase threshold. (200.88; 200.320(b); 3016.36(d)(1))**
 - D. ****Personal preference in process.**** (below \$50,000 can choose formal or informal)

Massachusetts Department of Elementary and Secondary Education



43

Question #3

- **What are the allowable processes of formal procurement?**
 - A. Simplified Procedures.
 - B. Sealed Bids (IFB)
 - C. Competitive Proposals (RFP)
 - D. Noncompetitive Proposals
 - E. All the above
 - F. B and C
 - G. Developing a solicitation while wearing a tuxedo or formal gown.

Massachusetts Department of Elementary and Secondary Education



44

Answer #3

- **What are the allowable processes of formal procurement?**
 - A. Simplified Procedures.
 - B. Sealed Bids (IFB)
 - C. Competitive Proposals (RFP)
 - D. Non-competitive Proposals
 - E. All the above
 - F. **b and c (200.320(c)&(d);3016.36(d)(2)&(3))**
 - G. Developing a solicitation while wearing a tuxedo or formal gown.

Massachusetts Department of Elementary and Secondary Education



45

Question #4

- **Must a non-Federal entity follow written procedures for formal procurement transactions?**
 - A. Yes
 - B. No

Massachusetts Department of Elementary and Secondary Education



46

Answer #4

- **Must a non-Federal entity follow written procedures for formal procurement transactions?**

A. Yes(200.319(c);3019.44(a))

B. No



Question #5

- **Can an SFA use a State or local list of prequalified persons, firms, or products which are used in acquiring goods and services?**

A. Yes

B. No



Answer #5

- **Can an SFA use a State or local list of prequalified persons, firms, or products which are used in acquiring goods and services?**
 - A. **Yes (200.319(d); formerly, 3016.36(c)(4))**
 - B. No



Question #6

- **In order for sealed bidding to be feasible, the following conditions must be present:**
 - A. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price
 - B. A complete, adequate, and realistic specification or purchase description is available
 - C. The item is available only from a single source
 - D. Two or more responsible bidders are willing and able to compete effectively for the business
 - E. a, b, & d



Answer #6

- **In order for sealed bidding to be feasible, the following conditions must be present:**
 - A. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price
 - B. A complete, adequate, and realistic specification or purchase description is available
 - C. The item is available only from a single source
 - D. Two or more responsible bidders are willing and able to compete effectively for the business
 - E. **a, b, & d (200.320(c)(1)(i-iii);3016.36(d)(2)(i)(A-C))**

Massachusetts Department of Elementary and Secondary Education



51

Question #7

- **I don't have to use price as a selection factor if I use an RFP.**
 - A. True
 - B. False

Massachusetts Department of Elementary and Secondary Education



52

Answer #7

- **I don't have to use price as a selection factor if I use an RFP.**
 - A. True
 - B. **False (200.320(d)(4);3016.36(d)(ii)(D))**



Question #8

- **Can a firm fixed price contract resulting from an IFB be made in writing to the lowest responsive and responsible bidder and not include factors such as discounts, transportation cost, and life cycle costs.**
 - A. Yes
 - B. No



Answer #8

- **Can a firm fixed price contract resulting from an IFB be made in writing to the lowest responsive and responsible bidder and not include factors such as discounts, transportation cost, and life cycle costs.**
 - A. Yes
 - B. **No (200.320(c)(2)(iv);3016.36(d)(2)(ii)(D))**

Massachusetts Department of Elementary and Secondary Education



55

Question #9

- **It is allowable for bidders to provide unsolicited additional items (milk cooler, scoreboards, etc.) for consideration when the SFA evaluates the bid?**
 - A. Yes
 - B. No

Massachusetts Department of Elementary and Secondary Education



56

Answer #9

- **It is allowable for bidders to provide unsolicited additional items (milk cooler, score boards, etc.) for consideration when the SFA evaluates the bid?**
 - A. Yes
 - B. **No (200.320(c)(2)(ii))**

Massachusetts Department of Elementary and Secondary Education



57

Question #10

- **Is it okay for an SFA to join or piggyback off an existing cooperative agreement?**
 - A. Yes
 - B. No
 - C. It depends on the Solicitation and who is involved in the Cooperative

Massachusetts Department of Elementary and Secondary Education



58

Answer #10

- **Is it okay for an SFA to join or piggyback off an existing agreement?**
 - A. Yes
 - B. No
 - C. **It depends on the Solicitation and who is involved in the Cooperative**



Bonus Question #11

- **XYZ School District would like to process its USDA Foods bulk chicken into flaming hot chicken tenders. If it uses an approved state processor does it have to be competitively procured?**
 - A. Yes
 - B. No



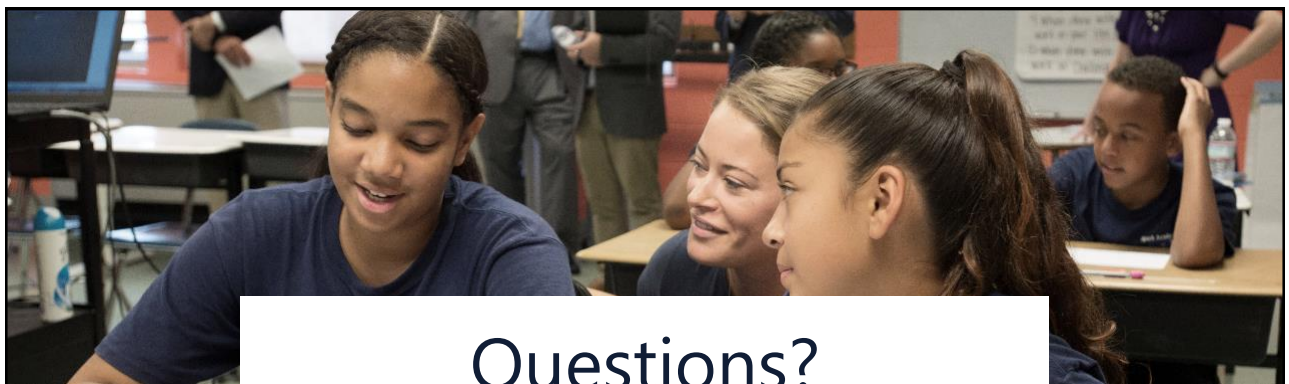
Answer #11

- A. Yes**, processed foods must always be competitively procured. Remember, state and national processing agreements are only agreements and do not replace the requirement for SFAs to competitively procure.

Massachusetts Department of Elementary and Secondary Education



61



Questions?

Pete McLoughlin
pmcloughlin@doe.mass.edu
781-338-6454

Mark O'Leary
mark.oleary@doe.mass.edu
781-338-6472

62

62