



**KPC – KENTUCKY PURCHASING COOPERATIVES**  
**GRREC – KEDC - NKCES – SE/SC**  
**KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION (KEDC)**  
**904 ROSE ROAD**  
**ASHLAND, KY 41102-7104**  
**Bidding Department (606) 928-0205**  
[www.kedc.org](http://www.kedc.org) or [www.kybuy.org](http://www.kybuy.org)

**\*\*\* INVITATION TO BID \*\*\***

BID TYPE: DISCOUNT FROM:  
CATALOG  
PRICE LIST  
RETAIL STORE SHELF PRICE

BID REFERENCE: CLS 2007

BID SUPPLEMENT NUMBER: 053

BID PUBLIC NOTICE DATE: July 13, 2009

BID OPENING TIME & DATE: July 27, 2009, 9:00 am EST

BID CONTRACT PERIOD: July 27, 2009 – December 31, 2009

**BID PURPOSE:**

The Kentucky Educational Development Corporation (KEDC) Board of Directors, as the Legal Education Agency (LEA) for the Kentucky Purchasing Cooperatives (KPC) solicits sealed bids that would, if accepted by the KEDC Board of Directors, establish contracts, with the general and detailed terms, conditions, and specifications contained in this bid document, to provide participating bidding member institutions the right to purchase goods and services that are not available as line items through KPC's Prime and Preferred Vendors at a fixed percentage discount on items from the bidder's catalog, price list, or store shelf. For example, if a specific item is not available as a line item from a KPC Prime or Preferred vendor, the member entity can purchase the item from an awarded Catalog, Price List, or Store Shelf Vendor. Awarded Bidders cannot sell to member entities goods, supplies, or services of any kind that are available as a line item from a Prime or Preferred Vendor. Awarded Bidders which violate this limitation, render their bid contract null and void. If the Awarded Bidder's contract is rendered null and void, the Awarded Bidder agrees that they have no legal recourse of any nature against KEDC, KPC, or its member entities except for payment of goods, supplies and services that are due for prior purchases which were permitted to be sold by the Awarded Bidder under this bid. Said contracts shall hereinafter be referred to as the Bid Contract.

**CLARIFICATION:**

For clarification or additional information relative to this Invitation contact the **KEDC Bidding Department** by email at [bidding@kybuy.org](mailto: bidding@kybuy.org) or phone (606) 928-0205. For administrative questions relative to this Invitation, contact **Steve Smith**, Director of Business Services Division at [steve.smith@kedc.org](mailto: steve.smith@kedc.org) or (606) 928-0205. **PLEASE DO NOT CONTACT SCHOOL DISTRICTS.**

**GENERAL CONDITIONS AND INSTRUCTIONS FOR BIDDERS:**

These General Conditions and Instructions apply to all bids submitted. Any deviations or exceptions are to be explained as a part of the bid proposal.

The public notice for this invitation, the invitation itself, and any addendums can be viewed, downloaded, or printed from the Internet at [www.kybuy.org](http://www.kybuy.org) or [www.kedc.org](http://www.kedc.org) on the bid public notice date and until the time and date specified for the bid opening. Bid tabulations will be made by KEDC staff and, after the Board has taken official action, will be posted to the KPC Internet site.

**AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST AND COMPLIANCE WITH THE KENTUCKY MODEL PROCUREMENT CODE:**

By my signature on the bid certification, I hereby swear or affirm under penalty of false swearing as provided by KRS 523.040:

I am the bidder (if bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority on its behalf (if the bidder is a corporation).

The costs quoted in the bid response are correct and have been arrived at by the bidder independently and have been submitted without collusion and without agreement, understanding, or planned common course of action, with any vendor of materials, equipment, or services described in the invitation to bid, designed to limit independent bidding or competition.

The contents of the bid or bids have not been communicated by the bidder, or its employees, or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bids and will not be communicated to any such person prior to the official opening of the bid or bids. Contractor certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.

The Kentucky Educational Development Corporation collective bidding process is conducted consistent with KRS Chapter 45A:345 through 45A:460, the Model Procurement Code and that the contents of the bid proposal and the actions taken by the bidder in preparing and submitting the bid proposal are in compliance with above sections of the Model Procurement Code.

The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, gratuities and kickbacks including those prohibited by the provisions of the Model Procurement Code (KRS Chapter 45A). Any employee or official of KEDC or member school districts, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the school district shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.

**CERTIFICATION CONCERNING DISBARMENT AND SUSPENSION:**

I certify on behalf of myself, the company and its key employees that neither myself, the company or its key employees have been proposed for debarment, debarred, or suspended by any Federal Agency and are not listed on the Excluded Parties List System provided by the United States Government General Services Administration at [www.epls.gov](http://www.epls.gov).

**TERMS AND CONDITIONS:**

- 1. Participating Member Institutions:** Any institution that is a bidding member of the GRECC, KEDC, KPC, NKCES, or SESC (hereinafter referred to as member or members) is eligible to utilize the Bid Contract; however this does not mean that all members will participate. A list of eligible members is included in the bid packet. A bidder will not be required to sell to or serve all eligible members. Any bidder that cannot serve all members is required to include in their bid proposal a copy of the provided list of members with the members that the bidder can and will serve circled. If this list is not returned then the bid contract will be available to all members.
- 2. Bid Forms and Return Instructions:** Bids will be submitted online via the KPC website at [www.kybuy.org](http://www.kybuy.org) following the instructions found online or via sealed bid utilizing the instructions below.

With advance permission from KEDC, bidders may submit a paper bid using the following procedure. Return the bid certification and bid form indicating the bid category(s) and the percentage discount offered on the bidder's current catalog, current price list, and/or current store shelf prices. When a category is indicated but a percentage is not indicated, then 0% discount will be assumed with the bid type being subject to clarification. Bidders should also include one copy of the current catalog or price list and Return Policy. Optional information may be requested, but bid will not be rejected if these items are not supplied. **The bidder should retain a duplicate copy.** An officer or member of the bidding firm who is authorized to legally bind the firm must sign the bid certification. The Bid Certification must be submitted with an original signature. The Bid Invitation Forms should be used without alterations. Modifications, additions, or changes to the terms and conditions of this Invitation to Bid may be a cause for rejection of a bid. Bidders are requested to submit all bids on KPC's official forms. Bids submitted on company forms may be rejected. By executing the Bid Certification, the bidder acknowledges that the bidder has read this invitation, understands it, and agrees to bind by its terms and conditions.

Bids must be received at the KEDC office at 904 Rose Road, Ashland, KY 41102-7104, not later than the specified bid opening time and date. **Faxed submissions will NOT be accepted. Bids received after the time designated for the bid opening will be returned to the bidder unopened.** Bids should be sealed in an envelope and clearly marked "BID ENCLOSED" with the Bid Reference Number printed on the envelope. KEDC and the participating bidding institutions cannot assume responsibility for any delay as a result of failure of the mails or delivery services to deliver bids on time. (Please note that FED EX does not guarantee delivery time to KEDC because they classify KEDC as being in a rural area.)

3. **Correction of Mistakes:** Bidders are cautioned to re-check their bid for possible errors. No bid can be corrected, altered, or signed after being opened. All prices and quotations must be in ink or typewritten. No pencil figures will be accepted. Mistakes are to be crossed out and corrections inserted adjacent thereto and initialed by the person signing the bid. Errors discovered after public opening cannot be corrected and bidder will be required to accept a bid contract if offered.
4. **Error in Bid:** No bid will be altered, or amended after the specified time and date set for the bid opening. The KEDC Board reserves the right to waive defects and informalities in bids, to reject any or all bids, or to accept any bid as may be deemed to its interest.
5. **Withdrawal of Bid:** All bids shall be valid for a period of thirty (30) days from the bid opening date to allow for tabulation, study, and consideration by the KEDC Board. A bidder may withdraw his bid after it has been submitted only if a written request is submitted and received prior to the expiration of the time during which bids may be submitted, without prejudice to himself or herself, by submitting a written request for its withdrawal to KPC, Attn: Bidding with the corresponding Bid Reference Number.
6. **Addendums:** KPC may issue an addendum to the bid after the bid has been released. In no instance will an addendum be issued within five (5) working days prior to the bid opening.
7. **Pricing:** The purpose of this bid is to obtain Bid Contracts that provide a fixed percentage discount on any or all of the following:
  - **The bidder's current catalog**
  - **The bidder's current price list**
  - **The bidder's current store shelf prices**

Bid Contracts may be accepted from multiple bidders. Contract discounts shall remain in effect for the entire contract and any agreed upon contract extensions, however additional discounts and/or special pricing are encouraged and may be accepted when consistent with other terms and conditions of the contract and offered equally to all members marked to be served by the Bid Contract.

Fuel surcharges and other similar charges are not permitted.

Bidders are to provide one discount level per category and list the KPC member(s) they propose to service. The bidder shall provide each item on this bid to all KPC members at the same price. Bidders **MAY NOT** submit multiple discount levels for the same product by KPC member (i.e., Regional Bidding is **NOT** acceptable).

Should an awarded bidder negotiate or bid a lower price for an item included in this bid with any KPC member, the bidder agrees to provide the product to all KPC members they propose to serve at the lower price. For example: District A and District B are both KPC members. Bidder is proposing to serve District A and not serve District B on their KPC bid documentation. The Bidder is providing service to the area where District A and District B reside. Bidder then establishes a price with District B for items that are on the KPC bid thru negotiation or a school district bid that is lower than the bid price with KPC. The lower prices provided to District B become the bid price for District A and all KPC members served by that bidder.

8. **Supplemental Items:** Each vendor submitting a bid acknowledges that the purpose of the bid is solely to allow member districts to purchase goods, supplies and services that are not available as a line item through KPC's Prime and Preferred Vendors. For example, if a specific item is not available as a line item from a KPC Prime or Preferred Vendor, the member entity can purchase it from an awarded Catalog, Price List, or Store Shelf Vendor. Awarded Bidders which violate this limitation, render their bid contract null and void. If the Awarded Bidders contract is rendered null and void, the Awarded Bidder agrees that they have no legal recourse of any nature against KEDC, KPC, or its member entities except for payment of goods, supplies, and services that are due for prior purchases which were permitted to be sold by the Awarded Bidder under this bid.
9. **Review:** After the public opening of proposals received from the Bid Invitation, KEDC staff and member officials will review the results, develop a preliminary tabulation, and may contact bidders for the purpose of clarification only. If necessary, members may purchase from the apparent low bidder pending approval by the KEDC Board of Directors or their designee.

10. **Award:** After the review of the bid proposals, the KEDC Board may accept one or more bid contracts based on the needs of the members. A bidder whose bid proposal is accepted shall hereinafter be called contractor. Multiple bid contracts may be accepted based on separate pricing structures as follows:

- **The bidder's current catalog**
- **The bidder's current price list**
- **The bidder's current store shelf prices**

11. **Contract Period:** The bid contract is for the time period indicated on page one of this bid document. The contract may be extended on an annual basis by KEDC not to exceed five years in total including the first contract period. The determination to renew the contract beyond the initial contract period will be determined in part by the performance of the contractor as reflected by performance evaluations. KPC may periodically provide evaluation summaries to the contractor. KEDC shall notify the contractor of its intent to extend or not to extend the contract by October 1 of each year. If KEDC notifies contractor of intent to extend the contract by one year, contractor shall respond by October 15 if they elect not to extend, or respond by October 15 with any necessary discount level increases or decreases for the extended year. Contracts will automatically be renewed with the most current terms if the contractor does not respond within 14 days of an offer to extend. If discount decreases submitted are deemed excessive by KEDC then KEDC shall have cause to not extend the contract. All discount decreases shall be accompanied by proper documentation of price increase to the contractor. Proper documentation shall include market bulletin(s) from an independent source, manufacturer's invoices, and freight bills. Price change notifications will follow the same pattern as above for any years in which this contract is extended. KEDC reserves the right to extend the term for up to 90 days to continue a source of supply until new or replacement contracts are completed. Since this bid request is subject to multiple contracts being accepted, KEDC reserves the right to renew and/or solicit additional bids for subsequent contract periods. The bid will not be automatically extended beyond any current year unless expressly approved by KEDC.
12. **Quantities:** It shall be understood that the bid contract will not obligate KPC or its members to purchase from the Bid Contract.
13. **Product Information:** The successful bidder shall provide upon request by any member, the most recent MSDS information sheets for any products the vendor may deliver to said member.
14. **Liability:** The contractor agrees to protect, defend, and save harmless KPC and members from any suits or demands for payment that may be brought against it for the use of any patented material, process, article, or device that may enter into the manufacture, construction, or form a part of the work covered by either order or contract; and contractor further agrees to indemnify and save harmless KPC and members from suits or actions of every nature and description brought against it for, or on account of any injuries or damages received or sustained by any party or parties by, or for any of the acts of the contractors, his servants or agents.
15. **Recalls:** The contractor shall notify KPC and its members immediately of any products recalls. Any products that have been recalled and have been delivered shall be issued a credit and/or a comparable substitute immediately.
16. **Usage Reports:** Usage reports in electronic format (Excel or comma delimited) shall be issued to KPC quarterly by the 25th day of the next month following the end of each quarter during the period of the bid utilizing the format provided by KPC. Since the usage report data is useful to both KPC and the contractor, it is of benefit to both parties to share this information.
17. **Delivery Charges:** All individual items weighing 70 pounds or less procured from this Bid Contract are to be delivered free of freight charges (FOB destination). Shipping charges may be added to individual items weighing 71 pounds or more; provide details of applicable charges in the Bid Certification.
18. **Ordering, Payments, and Administrative Fees:** Each member shall be responsible for making payment to the contractor, unless KEDC has been established as the Purchasing Agent for the contractor, in which case, KEDC will coordinate orders and payments directly to the contractor with the individual members being the ship to party. Normally, members pay bills only after approval from the member board which meets monthly. KEDC reserves the right to negotiate upon mutual agreement to serve as Purchasing Agent for any Bid Contract including charging an additional administrative fee to the contractor beyond the one percent fee detailed below.

The vendor's price will include an administrative fee of one percent (1%) on all purchases made by members in the catalog and price list categories that the vendor will remit to KEDC on the following schedule:

**Bid Period**

**Reporting and Payment Schedule**

January 1 – March 31

April 25<sup>th</sup>

April 1 – June 30

July 25<sup>th</sup>

July 1 – September 30

October 25<sup>th</sup>

October 1 – December 31

January 25<sup>th</sup>

Purchases made by members at a retail outlet under the store shelf bid are exempt from the one percent administrative fee. Examples of exempted purchases would include but not be limited to: a walk-in purchase at “XYZ Trophy Shop” or purchases made at the local Wal-Mart, Lowes, Target, etc. If you have questions as to which type of bid you operate under, please contact [bidning@kybuy.org](mailto:bidning@kybuy.org).

The minimum administrative fee is \$25.00 per quarter. The vendor will also compile and provide to KEDC a quarterly report showing all purchases made by members under this contract in a format provided by KEDC. The vendor will remit the administrative fee payment and report to KEDC, 904 West Rose Road, Ashland, KY 41102-7104. Report and payment schedule may be modified at the discretion of KEDC. If the vendor is awarded multiple KPC bids, the highest fee structure will apply.

Items that are available under a Prime or Preferred KPC bid are not to be purchased under this catalog bid.

19. **Warning and Termination of Contract:** KEDC may terminate the contract if the contractor fails to perform at the service level specified in the bid document. Contracts may be terminated at any time with 30 days notice or at the discretion of KEDC, in a shorter period of time, if the terms of the contract are violated in any way. In the event of termination, the members shall not be liable to any costs other than the cost of items delivered and accepted prior to the termination date. The contractor may terminate the contract if the members fail to meet mutually agreeable and specified payment terms.

Each party shall follow the following procedure if the contract is to be terminated:

- Step 1 - Issue a warning letter outlining the violations and state the length of time to correct the problem(s).
- Step 2 - Issue a letter of intent to cancel contract, if the problem(s) is not resolved by a given date.
- Step 3 - Issue a letter to cancel contract.

In the event the physical facilities of the contractor are destroyed or a labor dispute makes performance under the terms of the contract impossible, the contractor shall not be held liable by KPC or the members.

20. **Access to Records:** All contracts over \$10,000, awarded by the SFA, must include a provision to the effect that the SFA, the State agency, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
21. **Penalty:** The designated supplier(s) reciprocally agrees to provide total requirements as listed herein, thereby minimizing occurrences when a school district may have to seek other interim product sources. Failure to delivery 100% of the items on this list -- within 10 business days -- shall be considered a default.

A successful bidder must have proven (or believable) record of service, particularly with respect to delivering all items on a regularly scheduled basis, at favorable prices. A distributor may be designated as unacceptable if the requirements listed herein have been previously violated and/or poor communications exist between the seller and the school district.

Modifications, additions, or changes to the terms and conditions of this Invitation to Bid may be a cause for rejection of a bid. Bidders are requested to submit all bids on the school district’s official forms. Bids submitted on company forms may be rejected.

22. **Item Substitution and Out-of-Stock Back-Orders:** No substitutions are allowed without prior written authorization from the member. Member must be notified if item is out of stock, backordered or if timely delivery cannot be made. Upon member notification, the contractor must receive written directions from the member on how to proceed, i.e. cancel, process, etc.
23. **Returns:** The successful bidder must provide a Return Material Authorization within 1 working day of the request by KEDC or a school district. Returned materials shall be restocked at no charge to KEDC and/or the school district.

24. **Non-assignability of Awarded Bid:** The bid award will be made only to the individual or entity which actually submits a bid. The awarded bid cannot be conveyed to an awarded bidder's successors or assigns without the prior, express approval of the Board of Directors of KEDC.
25. **Contract Suspension:** KPC may, at its sole discretion, suspend a contractor for a period of up to 90 days to investigate alleged instances of breach of contract or non-compliance. The contractor is prohibited from accepting new orders from KPC members while suspended, however, orders already in process can be completed. If the Awarded Bidder is found to be in breach of contract or non-compliance, the contract is rendered null and void. The Awarded Bidder agrees that they have no legal recourse of any nature against KEDC, KPC, or its member entities except for payment of goods, supplies and services that are due for prior purchases which were permitted to be sold by the Awarded Bidder under this bid. The decision of KPC regarding suspension and/or termination is final.
26. **Other Conditions:**
- A. Contractors shall be in compliance and will comply with any and all local, state, and federal laws and regulations related to this bid and the rendering of goods and /or services.
  - B. This contract shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.
  - C. Contractors providing services under this bid invitation, herewith assure KEDC they are conforming to the provisions of the Civil Rights Act of 1964 as amended.
  - D. Kentucky Sales and Use Tax Certificate of Exemption Form will be issued upon request.
  - E. Contractor shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with the contractor's performance of work under this contract, contractor agrees not to discriminate against any employee(s) or applicant(s) for employment because of race, age, religious creed, sex, national origin, or handicap.
  - F. Contractor agrees to retain all books, records, and other documents to this agreement for three years after final payment. KEDC and its school districts, its authorized agents and/or state/or federal representatives shall have full access to, and the right to examine any or said materials during said period which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions. If the investigator or audit is in progress, records shall be maintained until stated matter is closed.
  - G. Contractor shall comply will all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C.) 187 [h], Section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738 and Environmental Protection Agency (EPA) regulations, (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included in the EPA list of violated facilities.
  - H. By signing this document, the contractor certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.
  - I. Prohibition against conflicts of interest, gratuities, and kickbacks: Any employee or official of KEDC or member school districts, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the school district shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.
  - J. The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by provisions of KRS 164.390, KRS 61.092-61.096, and KRS 42.990.
  - K. The provisions of KRS 365.080 and KRS 365.090 which permit the regulation of resale price by contract, does not apply to sales to the State.

- L. The bidder is fully knowledgeable of KRS 45A.335-45A.490, Kentucky Model Procurement Code, including the provisions for violation of the Code. KRS 45A.455 prohibits conflicts of interest, gratuities, and kickbacks to employees of KEDC or the Boards of Education in connection with contracts for supplies or services whether such gratuities or kickbacks are direct or indirect. KRS 45A.990 provides severe penalties for violations of the laws relating to gratuities or kickbacks to employees that are designed to secure a public contract for supplies or services.
- M. KEDC reserves the right to reject any and/or all bids and to waive informalities.

Please complete the bid proposal online at  
[www.kybuy.org/cgi-bin/kpclogin.htm](http://www.kybuy.org/cgi-bin/kpclogin.htm)

**KPC – KENTUCKY PURCHASING COOPERATIVE  
 VENDOR MONTHLY PERFORMANCE REPORT  
 (TO BE COMPLETED BY DISTRICT PERSONNEL)**

District: \_\_\_\_\_

Name: \_\_\_\_\_

Vendor: \_\_\_\_\_

Month of Survey: \_\_\_\_\_

5	4	3	2	1	N/A
Excellent	Very Good	Acceptable	Poor	Unacceptable	N/A
No Problems	Problems Occur rarely	Problems occur occasionally	Problems occur frequently	Problems occur daily	Not Applicable

- |  |   |   |   |   |   |     |
|--|---|---|---|---|---|-----|
| 1. Overall fill rates are:   | 5 | 4 | 3 | 2 | 1 | N/A |
| 2. Fill rates on critical items are:                               | 5 | 4 | 3 | 2 | 1 | N/A |
| 3. Special and/or surge requirements are handled effectively:      | 5 | 4 | 3 | 2 | 1 | N/A |
| 4. Emergency orders are filled in a timely manner:                 | 5 | 4 | 3 | 2 | 1 | N/A |
| 5. I was given adequate time and notice to agree to substitutions: | 5 | 4 | 3 | 2 | 1 | N/A |
| 6. Quantities received match quantities ordered:                   | 5 | 4 | 3 | 2 | 1 | N/A |
| 7. Vendor Representative is responsive to my needs.                | 5 | 4 | 3 | 2 | 1 | N/A |
| 8. Deliveries arrive within agreed upon time window:               | 5 | 4 | 3 | 2 | 1 | N/A |
| 9. Rate overall product quality:                                   | 5 | 4 | 3 | 2 | 1 | N/A |

Additional Comments and Concerns:

# Attachment A



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

Southeast      77 Forsyth Street. S.W.  
Region Atlanta. GA 30303

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**Reply to**

**Attn. of:** SESN-207

**Subject:**

**NSLP 94-10: Buy American Requirement**

**To:**

All State Child Nutrition Directors  
Southeast Region

It has come to the U.S. Department of Agriculture's (USDA) attention that school food authorities (SFA) may be using Federal funds to purchase foreign foods, e.g. canned peaches, even though the law, Federal Regulations, and local specifications prohibit this practice. USDA, therefore, wants to reiterate the "Buy American" requirement, which (1) benefits our children by ensuring that high-quality foods are available in school lunch programs, and (2) supports American agriculture.

As you are aware, Section 3 (h) of the Commodity Distribution Reform Act and WIC Amendments of 1987, and Section 250.23 of Federal Food Distribution Program regulations mandate that recipient agencies, including SFA's participating in the National School Lunch Program (NSLP), purchase, whenever possible, only food products that are produced in the U.S. A "food product produced in the U.S." is defined as "an unmanufactured food product produced in the U.S. or a food product that is manufactured in the U.S." In addition to exemptions set forth in the law for specific States and territories, and unusual or ethnic food preferences, the regulations identify two other situations which warrant a waiver to permit purchases of foreign products: (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 cost of a U.S. product is significantly higher than the foreign product. These circumstances are the only exceptions to Section 3 (h).

It is imperative that each SFA comply with the "Buy American" requirement by purchasing food products produced in the U.S. for its school feeding programs. Subject to the exemptions cited above, such purchases must at least be proportionate with the extent of Federal funding in the SFA's school food service account. Therefore, given reports of foreign products in school feeding programs, we request that you remind the SFA's in your State of the "Buy American" requirement and ask them to (1) check their purchasing specifications to ensure adequate procurement of U.S. food products, (2) remind their vendors and distributors of the "Buy American" requirement, and (3) examine product packaging. The Nutrition Labeling and Education Act of 1990 mandates that the country of origin for both domestic and imported food products be identified on the product labels.

Should you or your staff have any questions regarding this matter, please contact Rosie Daugherty or Brian Frasier of the School Programs Section at (404) 730-2631.

NENA P. BRATIANU  
Regional Director  
Special Nutrition Programs