

ProCureWorks.

a new recipe for human and environmental health

A Cross-Sector Approach to Institutional Food Procurement

How Schools and Hospitals Can
Organize Together for Healthier Food

Prepared for ProCureWorks
a joint initiative of School Food Focus and Health Care
Without Harm

by Harrison Institute for Public Law
Georgetown Law



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Authors

Sara Hoverter is the lead author of this document, and is a staff attorney and adjunct professor at the Harrison Institute for Public Law, Georgetown University Law Center. Gabrielle Gurian and Gina Pickerrell, law students at Georgetown University Law Center, contributed substantial research, drafting, and editing.

ProCureWorks

ProCureWorks is a joint initiative of School Food Focus and Health Care Without Harm. This cross-sector collaboration engages six California school districts representing over 560 schools, and eight California health care systems with over 55 member hospitals. ProCureWorks catalyzes food system change through the prioritization, development, delivery and service of healthy, sustainable and regional food items in communities of high need across California.

School Food Focus

School Food Focus's works to catalyze change in the food system so that every child in the U.S. has access to healthy school meals. Working with 46 of the largest school districts in the country, potentially tapping an enrollment of more than 5,000,000 students, Focus links the powerful procurement demand of PK-12 with healthier, regionally grown and sustainably produced foods. Since 2012, Focus has facilitated three multi-district "learning labs", each now at different stages of development – one national that brings together the procurement power of 21 districts working to change their sources of chicken, beef and dairy; and two place-based labs – in six districts of the upper Midwest and another six in the South – each focused on more regional sources in chicken, produce, and beans.

Health Care Without Harm

Health Care Without Harm (HCWH) has been implementing the Healthy Food in Health Care program across the country since 2005, with 13 regional organizers in place to provide organizing and technical assistance to hospitals that want to change their food service operations, purchase and serve healthier foods to their patients and community. To date, 580 hospitals nationwide have signed the Healthy Food in Health Care Pledge. More than 850 facilities (located in 37 states and Washington D.C.) in the Health Care Without Harm and Practice Greenhealth network are actively working on food issues. Over 4,000 health professionals have been educated and engaged through webinars, conferences, policy action opportunities, and the AMA- accredited Food Matters curriculum. The California program currently works with 170 hospitals, over 25% of all of the hospitals in the state, and has two Leadership Teams in place in San Diego and the Bay Area.

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Harrison Institute for Public Law

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How Schools and Hospitals Can Organize Together for Healthier Food

“Let food be thy medicine and medicine be thy food” – Hippocrates

I. Introduction

ProCureWorks is a joint venture between School Food Focus (SFF) and Health Care Without Harm (HCWH). ProCureWorks’ mission is to transform the food system by effecting change across the supply chain and to increase access to healthy food for school districts and hospitals within California by leveraging buying power across these two sectors. Beginning in 2015, California school districts and hospitals came together with three goals in mind: 1) to build a cross-sector Community of Practice, 2) to work across sectors to provide healthier, less processed, and more sustainably-produced foods to an institutional client base and 3) to use collective purchasing power to increase the variety of and access to such products for participating institutions and future stakeholders.

ProCureWorks (PCW) operates squarely in the space between food service and the food industry. Its stakeholders are some of the largest school districts and hospitals in the country. It is a valuable cross-sector collaboration, creating more affordable, healthy, regionally produced and sustainable food products to catalyze meaningful change in the food system. PCW is leading the discussion and setting the stage to enact equitable procurement policies to transform the food system by effecting change across the supply chain to support human and environmental health. PCW is also unique in that it is driven by two independent non-profit organizations in partnership – Health Care Without Harm and School Food Focus.

Health Care Without Harm (HCWH) has been implementing the Healthy Food in Health Care program across the country since 2005, with 13 regional organizers in place to provide organizing and technical assistance to hospitals that want to change their food service operations, purchase and serve healthier foods to their patients and community. To date, 580 hospitals nationwide have signed the Healthy Food in Health Care Pledge. More than 850 facilities (located in 37 states and Washington D.C.) in the Health Care Without Harm and Practice Greenhealth network are actively working on food issues. Over 4,000 health professionals have been educated and engaged through webinars, conferences, policy action opportunities, and the AMA- accredited Food Matters curriculum. The California program currently works with 170 hospitals, over 25% of all of the hospitals in the state, and has two Leadership Teams in place in San Diego and the Bay Area.

School Food Focus’s mission is to catalyze change in the food system so that every child in the U.S. has access to healthy school meals. Working with 46 of the largest school districts in the country, potentially tapping an enrollment of more than 5,000,000 students, Focus links the powerful procurement demand of PK-12 with healthier, regionally grown and sustainably produced foods. While school meal budgets are smaller than those in hospitals, the numbers of students enrolled in these primarily large districts drives the procurement change power of schools. Since 2012, Focus has facilitated three multi-district “learning labs”, each now at different stages of development – one national that brings together the procurement power of 21 districts working to change their sources of chicken, beef and dairy; and two place-based labs – in six districts of the upper Midwest and another six in the South – each focused on more regional sources in chicken, produce, and beans.

After months of research, the PCW Community of Practice decided to focus on driving change in three product categories and through four themes broadly categorized as “procurement processes.” The three

product categories include chicken/poultry, beef, and grains. The four procurement processes include: 1) shared contract and specification language (a possible procurement method outlined in this document), 2) Foster Farms' adoption of the Certified Responsible Antibiotic Use label, 3) metrics to define family farms and small to mid-sized businesses and 3) distribution of products within the three product categories.

What follows is an analysis that emerged from work conducted on the shared contract and specification language “procurement process.” As part of this work, the PCW Community of Practice sought to determine the procurement method most compatible with 1) PCW members’ regulatory requirements and 2) PCW’s four main procurement goals when buying chicken, beef, or grain products.

Since this cross-sector approach is the first of its kind, it raises novel questions of regulatory compliance. Different PCW members (school districts, state hospitals, federal hospitals, and private hospitals) operate under different regulatory frameworks. To ensure compliance while purchasing across sectors, PCW identified four multi-sector purchasing methods (each outlined in this document) to accomplish its procurement goals. The four main procurement goals include, 1) full participation of the Community of Practice, 2) rapid implementation of strategy, 3) lower prices, and 4) market impact.

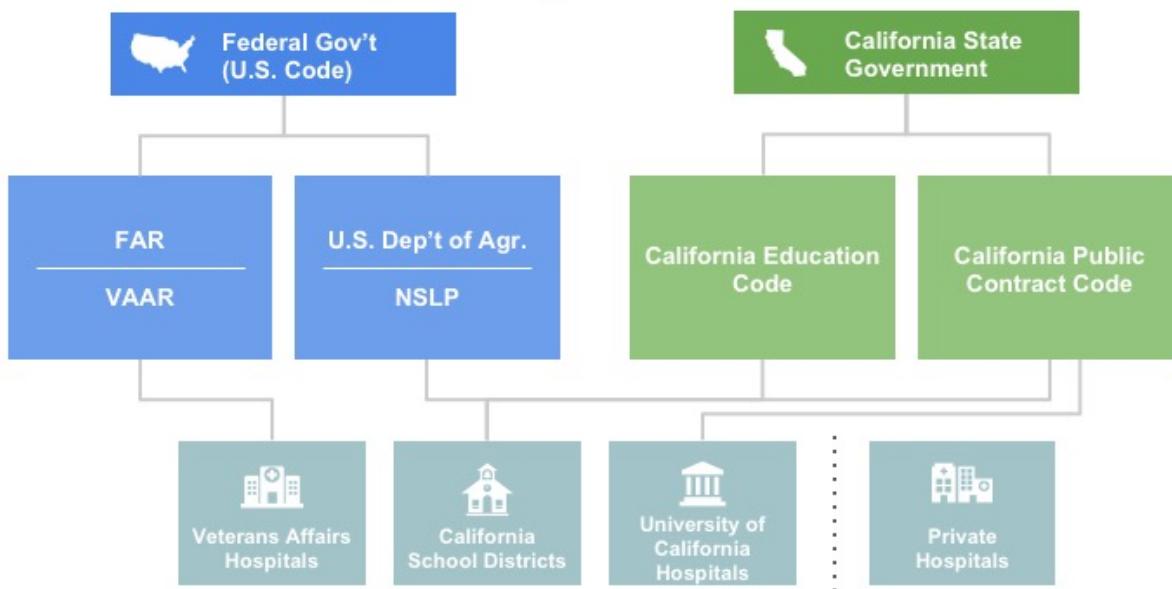
“Full participation” refers to the ability of all members to buy together under the same method. “Rapid implementation of strategy” refers to easy and prompt deployment of the method. “Lower prices” refers to access to more affordable foods, and “market impact” refers to the message that the method sends to producers to provide more of the desired product. Each of the different procurement methods (outlined in this report) supports each of these goals to different degrees, and none allows for each goal to be met perfectly. For that reason, groups hoping to similarly engage in cross-sector procurement will need to prioritize goals among members to find the best option for their specific collaboration. PCW members, for example, after deliberation, determined full participation and quick implementation to be their top two priorities and analyzed the methods through this lens.

This document provides a resource for schools and hospitals similarly dedicated to procuring sustainable and healthy foods for their institutions by utilizing a step by step approach to collaborative procurement analysis. The next section provides a brief overview of the regulatory frameworks under which PCW schools and hospitals operate. The subsequent section describes each of the four cross-sector procurement methods. It also lays out administrative steps to be taken and analyzes the potential advantages, disadvantages, and areas of legal concern for each method. Lastly, it analyzes how to combine the legal constraints with organizational priorities, using PCW as a case study.

II. The Regulatory Framework

PCW members fall into four types: school districts (“SDs”), University of California Medical Centers (“UCMCs”), Veterans Affairs Medical Centers (“VAMCs”), and private hospital systems. Each type is governed by different laws and therefore must follow a separate set of procurement regulations. These regulations, outlined in the graphic below, dictate the different procurement requirements for each entity type.¹ For example, VAMCs, as federal hospitals, exclusively follow federal law; UCMCs, as state entities, follow state law; SDs follow both state and federal law; and private hospitals operate under their own, self-governed systems.

Procurement Regulations Applied to ProCureWorks Members



All public entity members share commonalities stemming from both state and federal law.ⁱⁱ The details of these requirements, briefly outlined below, differ for each participant type due to the different regulatory systems they operate under (see graphic). For example, VAMCs, UCMCs, and school districts all follow certain competitive bidding thresholds, but the amounts that trigger formal bidding differ for each. Additionally, state rules vary: California state procurement law (the focus of this report) will differ from New York or Washington state law, for example.

For these reasons, it is crucial that collaboratives like PCW research and assess sector- and state-specific requirements before engaging in cross-sector purchases, in order to ensure that all entities are in compliance. The brief overview below helps initiate this process by providing a snapshot into the various rules that impact each sector including: 1) full and open competition 2) informal/formal bidding thresholds and 3) geographic preference.

a) Full and Open Competition

The first and most fundamental procurement principle is “full and open competition.” Required under both federal and state law, “full and open competition” refers to the transparent bidding process that public agencies must use to procure goods and services, including food. In practice, buyers must create a level-playing field for bidders by ensuring that solicitations 1) do not involve conflicts of interest and 2) are neither overly selective, specific, narrow, or influenced.ⁱⁱⁱ This ensures that taxpayer dollars are used efficiently and that goods procured meet the institution’s needs at the best price.^{iv}

Competition becomes especially important when trying to procure highly specific items not broadly available in the market: for example, “antibiotic-free chicken” or “grass-fed beef.” Because fewer vendors produce these items than produce conventionally raised chicken or beef, collaboratives may need to conduct market research to verify that the specification is not so narrow as to limit the number of vendors able to compete for a bid. Specifying a brand name or specific vendor, for instance, would likely violate full and open competition.^v

Further, under federal and state law, public entities must ensure that vendors chosen are both “responsible and responsive.”^{vi} This, in practice, works to ensure that vendors can and will successfully comply with the contract. “Responsive” refers to vendors’ conforming to all the stated terms and conditions of the contract, whereas “responsible” pertains to their ability to successfully perform under the conditions.^{vii}

b) Informal/Formal Bidding Thresholds

Public entities also must ensure compliance with specific threshold amounts for bidding. These thresholds dictate when entities should conduct formal or informal bidding procedures.^{viii} Federal law sets thresholds for federal hospitals and school districts,^{ix} while state laws set their own thresholds for school districts and state hospitals.^x

School districts must comply with the stricter of the thresholds, which is often the state threshold (in California, the threshold is \$88,300 compared to the federal threshold of \$250,000).^{xi} If a school district procures more than that amount from one contract, it must follow formal bidding procedures.^{xii} The same goes for state hospitals, (in California the threshold amount is \$100,000),^{xiii} and federal hospitals.^{xiv} Since these requirements vary by state and by entity, each group should conduct research into specific threshold requirements in its state.

c) Geographic Preference

Under federal “geographic preference” rules, solicitations cannot specifically require local products but can instead award local products a “competitive advantage” during bidding.^{xv} This rule is especially important for school districts to consider. Instead of stating “local grapes only,” a school could instead give a five-point advantage to a vendor that provides grapes that meet their definition of local during bidding.^{xvi}

It is important to note that each of the above requirements will vary depending on the entity (federal, state, or private) and the state. Therefore, examining laws specific to collaborative members will be essential to buying together while remaining in compliance with sector-specific rules. However, once a group determines the federal and state requirements that apply, members can begin to determine the procurement options most compatible with their food procurement goals.

III. Collaborative Purchasing Strategies Explored

Harrison and PCW identified four strategies that allow for collaborative procurement for PCW under California law. These methods include 1) Shared Language, 2) Line-Items, 3) Existing State Contracts, and 4) Cooperative Purchasing. Each option is outlined below, including how the method functions, possible legal concerns, and the advantages and disadvantages based on possible procurement goals. For each option, the memo also provides examples where possible of what these options might look like in other states, as well as legal and policy questions collaboratives would need to investigate to pursue that particular option.

A. Shared Language

Shared Language allows entities to issue individual solicitations containing mutually agreed-upon, identical (or nearly identical) language. In practice, members are able to identify a product, agree on a specification (for example, “antibiotic-free chicken thighs”) or a set of criteria for evaluating bidders or quality of products and insert this or similar language into their individual solicitations. This method is the simplest of the four: all members can use this method by simply continuing to buy as they always have, using the new product specifications.^{xvii}

Participants will need to ensure they remain in compliance with the sector-specific procurement regulations discussed above,^{xviii} such as “full and open competition.” Additionally, this form of collaborative buying can raise certain antitrust concerns. While full and open competition laws work to ensure an equal playing field between vendors, antitrust laws work to ensure that unfair competitive advantages do not arise in the marketplace.^{xix} Collaborations could raise antitrust concerns, for example, if the group commands enough buying power to 1) lower prices in a way that harms the vendor, 2) raise prices for other buyers, or even 3) reduce the product’s overall output or quality. Large collaboratives will, therefore, want to take precautions to avoid legal complications, especially if they include private entities.

Fortunately for most collaboratives, public entities are largely exempt from antitrust laws. Federal entities (including federal hospitals) are exempt,^{xx} as are public schools and state hospitals as state entities.^{xxi} Private hospitals, however, do not fall under any clear antitrust exemption. They can avoid antitrust issues, though, by following certain safeguards. Purchasing arrangements in health care are unlikely to raise antitrust concerns if 1) the total purchases account for a relatively small part of the market and 2) the products purchased are a small percentage of the revenue made by the hospital.^{xxii} Private hospitals, therefore, may want to conduct market research into the likely effect of group purchases on the specific market they wish to enter to assess the risk of an antitrust violation. As with full and open competition, the more specialized and narrow the market for a product, the likelier the chance of an antitrust violation.

It is also important to note that state antitrust law can add another layer of analysis beyond the federal. Many states use their own antitrust statutes as well. For example, in California, the Cartwright Act is more or less parallel to federal law and the analysis yields parallel results, limiting the potential complication.^{xxiii}

Overall, to avoid antitrust concerns, participants should document their decisions to ensure that combined purchases do not anti-competitively affect the market in the ways described above. One way to do this is by using market research to demonstrate low market share as well as the benefits of collaboration on the market. Potential benefits could include efficient use of resources, greater institutional access to cheaper, higher quality goods, and increased innovation.

In conclusion, the Shared Language method allows full participation and can be used quickly, making it a straightforward and quick solution for most collaboratives. At the same time, this method may produce a less powerful effect on the market than some others, and therefore less reduction in price, because entities are continuing to buy individually. Moreover, this method could introduce antitrust concerns that must be mitigated. Therefore, participants, depending on their status as public or private entities, must take care to avoid limiting market competition, must always document their procurement processes to explain their decisions, and must also conduct a separate analysis of state antitrust law in addition to federal.

Shared Language Checklist
<ul style="list-style-type: none">✓ Verify entity authority to purchase foods✓ Mutually decide on a product or product specification✓ Draft language to include in individual contracts✓ Remain aware of differences in purchasing and contracting requirements, paying special attention to full and open competition✓ Beware of antitrust concerns including market share and federal/state antitrust rules

B. Line Items

Line Item procurement refers to the process of adding new products to an already-established contract such as a distributor contract or a Group Purchasing Organization (GPO) contract. It differs from shared language in that each member would amend an existing contract rather than bidding a new contract. This method is relatively easy to implement because, like shared language, entities can continue to buy as before. However, the line item process could take somewhat longer if entities are purchasing highly specific products not commonly available in the market. The extra steps involved for this situation are discussed below.

In order to incorporate new items into a contract, entities first need to ensure that their existing contracts allow amendments and that the distributors or GPOs are willing to procure new, possibly specialty items. Most contracts allow for occasional changes to a product list; however, contract provisions may vary and entities should verify before choosing this method. Schools need to be aware of materially changing the contract, which would require re-bidding.^{xxiv} Schools purchasing highly specific products must also 1) follow federal rules that require certain “screening” procedures before buying those products,^{xxv} and 2) conduct a “cost price analysis” to give the purchaser an expectation of price ahead of time.^{xxvi}

Federal hospitals are allowed to modify contracts if they submit a specific form to modify or amend the contract.^{xxvii} After filing it, if procuring highly specific products or products available from only one manufacturer, federal hospitals need also to provide justifications for that specificity as outlined in federal law.^{xxviii}

State hospital requirements vary depending on state-specific law. In California, for example, hospitals must document line item changes for various reasons, including if the hospital is seeking brand or specialized products.^{xxix} State hospitals may want to consult their internal protocols and policies for any other required procedures.^{xxx}

As long as each entity follows its sector-specific requirements, all member categories can participate by using the Line Items method. As long as each contract includes an amendment provision, line items can be added quickly, making this method a relatively simple and straightforward approach. However, participants will still need to ensure full and open competition, by not unduly limiting the number of vendors able to provide highly specific products. In addition, if procuring unique or specialty products, adding line items can involve additional steps, which could add administrative costs and time. Because participants are buying separately, this method may produce a less powerful effect on the market than some others.

Line Items Checklist

- ✓ Ensure contacts include an amendment provision
- ✓ Ensure distributors are willing to procure specialty items, if applicable
- ✓ Ensure respective entities comply with screening or other procedures
- ✓ Ensure specification does not unduly restrict competition

C. Using Existing State Contracts

Many states allow state and local entities to buy from pre-existing contracts competitively bid and maintained by the state. This is sometimes referred to as a form of “piggybacking,” but states assign different names to this process. For example, Michigan allows public entities to use “State Run

Cooperative Purchasing^{xxxii} and Minnesota provides the option of “State Cooperative Ventures.”^{xxxiii} California calls this process “Leveraged Procurement Agreements” (LPAs).

Since many states typically procure food under statewide contracts already, this can be a useful tool for school-hospital collaboratives because it 1) eliminates the time-consuming bid processes of individual departments and 2) leverages larger state purchasing power to reduce prices.^{xxxiv} Not every state, however, allows this practice, and many states restrict the types of entities that can buy from their contracts. For example, in California, state contracts are reserved for public entities (defined as state and local governments), excluding both federal and private hospitals.^{xxxv} Therefore, before using this method, participants will want to verify 1) whether their state has such a system,^{xxxvi} 2) whether all members can use it, and 3) whether contracts exist for the goods they want to purchase.

If a state contract system does exist, but the specific foods desired are not yet purchased, participants may need to petition the state for a new contract that includes the desired items. This may require market research in support of such an endeavor.^{xxxvii} PCW confronted this issue in California because the specific foods it hoped to procure^{xxxviii} were not currently being purchased by the state procurement agency.

Collaboratives will need to evaluate this option by weighing the time and administrative procedures needed against the possible gains. This method requires parties to either select an available contract or ask the state to solicit a new contract, which could take some time to implement. This method also may not achieve full group participation if a group includes federal or private entities and the state does not allow them to buy from statewide contracts. Additionally, this method may produce a less powerful effect on the market if only a portion of the participant categories can join. On the other hand, if a group is made up of public entities (or the state system allows for wider membership) and contracts exists for products desired, this option could be very useful.

It is important to note that buying from a state contract does not exempt the public entities from complying with state and federal procurement rules.^{xxxix} For instance, because school districts follow both state and federal procurement rules; any solicitation issued by the state would need to ensure that it followed those rules so that school districts could buy from the resulting contract.

Using An Existing State Contract Checklist

- ✓ Ensure that your state has statewide contracts available to other buyers (Be aware that other names are used –State Procurement Venture, etc.)
- ✓ Check which entities qualify (i.e. in California only public entities)
- ✓ Check the various state contract options to determine which are compatible with food procurement
- ✓ Identify the group’s product specifications
- ✓ If product desired is not currently purchased, verify steps to petition for a new food contract
- ✓ If purchasing together, ensure that the contract follows all applicable state and federal rules that apply to any of the partners

D. Cooperative or Joint Purchasing

In cooperative purchasing, one or more entities form a group that then purchases items for all of them under one solicitation.^{xxxx} This method has become popular due to its ability to reduce administrative costs, lower contract prices through aggregated purchasing, and significantly impact the market.

Legal authority to form a cooperative varies by state. Some states do not allow cooperative purchasing at all, while others regulate or restrict participation to certain types of buyers.^{xl} California, for example, allows various state and local agencies and organizations to create cooperatives, from schools to non-profit organizations. California also allows the formation of either 1) participant-led collaboratives, where one member procures on behalf of the remaining members, or 2) independent legal entities, where an independent agency, formed by group members, procures on the group's behalf.^{xli} Illinois, in contrast, limits cooperative purchasing agreements to public agencies and does not specify the types of legal arrangements available.^{xlii}

States often refer to cooperative arrangements by different names. California, for example, refers to cooperative groups as "Joint Purchasing" Agencies or Agreements^{xliii} while Kansas calls them "Inter-local Cooperation" or simply "Cooperative Purchasing Groups,"^{xlv} and Arizona calls them "Joint Exercise of Powers" or "Intergovernmental Agreements."^{xlv} Therefore, groups should first check state statutes to determine 1) their authority to cooperatively purchase and the term their state uses 2) the types of possible arrangements, and 3) state limits imposed on participation, such as public status or geographical restrictions.^{xlii}

In California, PCW first analyzed the cooperative purchasing authority under state law. California's "Joint Powers Authority" allows for both 1) participant-led collaboratives, referred to as "joint powers agreements" and 2) the creation of independent cooperatives, known as "joint powers authorities." Schools, state hospitals, and federal hospitals were included in the statute, allowing for nearly full participation.^{xlvii}

Because cooperatives allow for nearly full participation and members can channel their joint purchases towards certain products, cooperatives have the strongest impact on the market. They also allow members to work together to solve problems, reduce contract prices due to the quantity being purchased under a single contract, and can be sustained for long-term use once the initial administrative and legal requirements are satisfied.

The amount of administrative and legal effort involved in establishing a cooperative depends on the commitment of the participants. Cooperatives usually require written specification of the terms and procedures that designate a lead purchaser for the group. Also, cooperatives must often be approved by the governing boards of each entity and sometimes state agencies; these administrative requirements can take significant time and delay the first cooperative purchase for a collaborative. However, once established, the cooperatives can save significant time for members.

Entities remain responsible for ensuring that the cooperative's contracts comply with both state and federal law, including full and open competition. This can require significant legal coordination. The cooperative will be subject to the most restrictive requirements of the partners and must comply with (for example) National School Lunch Program rules in order for school districts to be able to purchase, in a kind of "highest common denominator" requirement.

In the end, PCW did not choose this method as a starting point as it did not meet PCW's two top priorities of full participation (some hospitals were excluded) and quick implementation.

Joint Authority Checklist

- | |
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| <ul style="list-style-type: none">✓ Check state-specific statutes to ensure cooperative/joint purchasing authority✓ Once authority is established, determine limits of entity participation (i.e. is participation restricted to public entities?)✓ Designate a lead entity to conduct procurement (qualified in procurement and |
|--|

- commitment to perform cooperative purchases); either a member or an independent cooperative, depending on the model
- ✓ Require members to sign an agreement, including policies and procedures
 - ✓ Issue one bid from all purchasing members making sure to adhere to different entity bidding requirements

IV. Conclusion

Each of the four procurement methods outlined above exhibits advantages and disadvantages. Benefits, concerns, and implementation priorities will depend on group-specific collaborative goals. For PCW, overarching goals included full participation of members; quick, simple implementation; lower prices; and market impact. To begin its collaboration, PCW chose Shared Language based upon the high potential for participation and ease of implementation.

Other groups might choose different priorities and therefore a different method. The following chart compares each method, including pros and cons based upon 1) participation, 2) legal and administrative concerns, 3) time frames, and 4) leveraged effects on the market. It is important to note that this chart is based on the membership categories of PCW. Therefore, additional analysis will need to take place if other types of partners (e.g., universities) join a collaborative in another state.

In conclusion, although the market signal and collaboration is lower for shared language and line-items, the implementation time is short. Similarly, using a state contract provides the same quick results if contracts already exist, but they may limit potential participation if not all partners are authorized to purchase from those contracts. Finally, cooperative purchasing agreements have the potential to create a strong market signal, with a high participation percentage, but require a long-term commitment by the participants and may require more effort and time to establish.

Procurement Options	Participation Level	Legal Concerns	Administrative Challenges	Timeline	Market Signal
Shared Language & Line-Items	Full	Antitrust, Drafting contract language	Contract or Solicitation Modifications	ASAP	Low
Leveraged Procurement Agreements	Mid	State contracts following federal rules	Identifying Contract Petitioning for Contract	Medium	Low-Mid
Joint Powers Agreements	Potentially Low	Entity Specific Rules – Abide by most strict	Long-Term Commitment from Participants, Drafting Agreement, Identifying Lead	Long-Term	High

ⁱ Note this graphic uses ProCureWorks and California as a case study. The specific laws would look different in a different state.

ⁱⁱ Private hospitals are not required to follow these rules. *See 10 U.S.C. § 2304, 41 U.S.C. §§ 1901, 3301, 42 U.S.C. § 1786. See also 7 C.F.R. § 246.13(e), (h), (j), FAR §§ 2.101(b), 6.1. And see USDA, Procuring Local Foods for Child Nutrition Programs, 34 (U.S.D.A. August 2015).*

ⁱⁱⁱ 10 U.S.C. § 2304, 41 U.S.C. § 3301. *And see FAR § 6.1. USDA, Procuring Local Foods for Child Nutrition Programs, 34 (U.S.D.A. August 2015).*

^{iv} 2 C.F.R. § 200 (2014). *See also USDA, Procuring Local Foods for Child Nutrition Programs, 29 (U.S.D.A. August 2015).*

^v Specifying a desired vendor or brand product, for example, will likely narrow competition too much. Partners can conduct market research into each potential requirement to see how many producers could bid for each and use this research to inform their final specifications.

^{vi} 31 U.S.C. § 503. *See also 2 C.F.R. § 200.320(c), (d) (2015). And see USDA, Procuring Local Foods for Child Nutrition Programs, 36 (U.S.D.A. August 2015).*

^{vii} Factors to consider when determining responsiveness and responsibility include, for example, the vendor's experience, facilities, reputation, financial resources, and anything else necessary to successfully comply with the terms of the contract.

^{viii} Formal bidding procedures may involve a Request for Proposals or Invitation to Bid and generally require publication and notice requirements, as well as sealed bidding or other requirements. Informal bidding generally requires, at minimum, documentation of contact with three or more bidders to assess ability to provide the product as well as price.

^{ix} 41 U.S.C. § 1901. *See also FAR § 2.101(b). The VAMC follows federal thresholds, with an adjusted micro-purchase threshold of \$3,500 for a simplified purchasing process of supplies (such as food*

^x 31 U.S.C. § 503. *See also 2 C.F.R. § 200.317.*

^{xi} CITE

^{xii} CAL PUB. CONT. Code §§ 20112, 20116, 20118.

^{xiii} University of California – Policy BFB-BUS-43 Material Management, 3 (October 19, 2016).

^{xiv} 41 U.S.C. § 1901. *See also FAR § 2.101(b). VAMC follows federal thresholds, with an adjusted micro-purchase threshold of \$3,500 for a simplified purchasing process of supplies (such as food)*

^{xv} USDA, Procuring Local Foods for Child Nutrition Programs, 34 (U.S.D.A. August 2015).

^{xvi} School Food Focus, Geographic Preference Primer: https://fns-prod.azureedge.net/sites/default/files/FOCUS_GP_Primer.pdf

^{xvii} Their respective purchasing authorities allow each to independently purchase. CAL EDUC. Code § 38083. *See also CAL PUB. CONT. Code §§ 10507.7-10507.8. And see 5 U.S.C. § 101, 41 U.S.C. § 3101*

^{xviii} USDA, Procuring Local Foods for Child Nutrition Programs, 34 (U.S.D.A. August 2015). *See also 42 U.S.C. § 1758(j) and see 7 C.F.R. § 210.21(g) (2013).*

^{xix} *See 15 U.S.C. § 1-7. The Sherman Act disallows any “contract, combination or conspiracy in restraint of trade.” This is interpreted as “unreasonably restrictive” since all contracts and combinations restrain trade in some way.*

^{xx} U.S. v. Cooper Corporation, 312 U.S. 600, 605 (1941) (holding that the federal government and its agencies are not “persons” under the Sherman Act).

^{xxi} *See Parker v. Brown*, 317 S. Ct. 341, 351 (1943) (stating that the Sherman Act was not meant to restrain state action or official action directed by a state). This exemption is in place to ensure viability of state policy objectives and applies to state entities or official units acting pursuant to “1) a clearly articulated state policy that is 2) actively supervised by the state.” City of Lafayette v. Louisiana Power and Light, 435 U.S. 389, 412 (1978) (holding that the Parker exemption applies to anticompetitive conduct engaged in as an act of the State as its sovereign or its subdivisions pursuant to state policy).

^{xxii} Department of Justice and Federal Trade Commission, *Statements of Antitrust Enforcement Policy in Health Care* (August 1996). Less than 35% of the total sales in the current market, less than 20% of the total revenue made by the hospitals.

^{xxiii} The Cartwright Act also allows an exemption for “political subdivisions,” which include schools and state hospitals. Collaboratives in other states, however, will need to conduct a separate analysis of their state-specific antitrust law to ensure compliance.

^{xxiv} A change to an existing contract that substantially alters the terms and conditions of that contract can be a material change, which creates a contract that other vendors would have bid differently if the change had been included in the original solicitation.

^{xxv} 7 C.F.R. §§ 210, 220 (2010). *See also* NFSMI, Procurement in the 21st Century, Resource Manual (2015) <http://www.nfsmi.org/documentlibraryfiles/PDF/20151009032855.pdf>; USDA, Procuring Local Foods for Child Nutrition Programs, 54 (U.S.D.A. August 2015).

^{xxvi} 2 C.F.R. § 200.323. Under this regulation, federal grantees must perform a price cost analysis if a procurement action is above the small purchase threshold in order to give the contractor an expectation of what the price will be.
^{xxvii} 48 C.F.R. § 53.243; 48 F.A.R. § 43.205. Standard Form 30: Amendment of Solicitation/ Modification of Contract requires one of two processes: 1) Indefinite Distribution/Indefinite Quantity Contracts or 2) Single Award Contracts.

^{xxviii} 48 C.F.R. § 16.505(a)(1), (4). If the product is highly specific VAMC must prove both that 1) the product is essential to the agency's need and 2) market research indicates that other, similar products fail to meet, and cannot be modified to meet, the necessary product specificity.

^{xxix} CAL PUB. CONT. Code § 10129.

^{xxx} University of California, Office of the President – Procurement Services Forms and Policies (Jan. 10, 2017) <http://www.ucop.edu/procurement-services/policies-forms/index.html>.

^{xxxi} MICH. COMP. LAWS ANN. § 380.623a (2014).

^{xxxii} MINN. STAT. ANN. § 471.345 Subd. 15 (West 2014).

^{xxxiii} CAL PUB. CONT. Code §§ 10290 et. seq. and 12101.5. State Contracting Manual (SCM): Volume 2, Chapter 6, Leveraged Procurement Agreements (September 2005). In California, the LPA program was established by the California Department of General Services (DGS).

^{xxxiv} Participants should check state specific regulations as some may include limited provisions for non-profit hospitals.

^{xxxv} Nebraska for example does not mention piggybacking in its Procurement Code at all. [VERIFY]

^{xxxvi} State Contracting Manual (SCM): Volume 2, Chapter 6, Leveraged Procurement Agreements (September 2005).

^{xxxvii} (antibiotic free chicken, whole grain pasta, grass fed beef)

^{xxxviii} California Procurement Handbook, Westlaw

^{xxxix} NASPO at 176-178. *See also*, NATIONAL FOOD SERVICE MANAGEMENT INSTITUTE THE UNIVERSITY OF MISSISSIPPI, PROCUREMENT IN THE 21ST CENTURY, 113-139 (2013), available at

<http://www.nfsmi.org/documentlibraryfiles/pdf/20130820034348.pdf>

^{xl} NASPO, Strength in Numbers; An Introduction to Cooperative Procurements. (February 2006).

^{xli} Governments Working Together: A Citizen's Guide to Joint Powers Agreements, California State Legislature, Senate Local Government Committee (August 2007). Participant led collaboratives are called "Joint Powers Agreements," where members agree via legal contract to buy together and then one partner procures on behalf of others. The separate legal entities are called "joint powers agencies." This requires the formation of a independent legal organization separate from members who procures on behalf of all partners.

^{xlii} 5 ILCS 220/2 Intergovernmental Cooperations Act stating: the term "public agency" shall mean any unit of local government as defined in the Illinois Constitution of 1970, any school district, any public community college district, any public building commission, the State of Illinois, any agency of the State government or of the United States, or of any other State, any political subdivision of another State, and any combination of the above pursuant to an intergovernmental agreement which includes provisions for a governing body of the agency created by the agreement.

^{xliii} *See* CAL. GOV. Code §§ 6500

^{xliv} Kansas Interlocal Cooperation Act § 11-102-1. 12-2901

^{xlv} Arizona Intergovernmental Operations

^{xlivi} Some states only allow cooperative arrangements within state boundaries. For more information, the National Cooperative Purchasing Alliance provides a useful map tool to access state laws on cooperative purchasing. available at: <http://ncpa.us/Statutes>.

^{xlvii} *See* CAL. GOV. Code §§ 6500, et seq. *and supra* note 1 at 5, stating "Agencies that can exercise joint powers include federal agencies, state departments, counties, cities, special districts, school districts, redevelopment agencies, and even other joint powers organizations. A California agency can even share joint powers with an

agency in another state.” *See CAL. GOV. CODE §§ 6523.5-.9.* Nonprofit hospitals are authorized to participate in certain counties (Contra Costa, Kings, San Diego, Tulare, and Tuolumne) and for-profit hospitals not at all.