



Food and Nutrition Service

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Braddock Metro Center

SUBJECT: Questions and Answers for Child Nutrition Programs Emergency Procurement Due to Supply Chain Disruptions

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TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

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Summary:	(1) This memorandum provides clarification on questions related to Child Nutrition Programs use of emergency procurements due to supply chain disruptions caused by COVID-19. (2) This memorandum applies to State agencies administering the National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program. (3) This document details further instructions and administrative procedures for utilizing the noncompetitive procurement method in 2 CFR 200.320(c).

Due to COVID-19, some school food authorities (SFAs) are facing supply chain disruptions including severe food product shortages, unexpected substitution of food products, the unanticipated cancellation of food and supply contracts, and increased food and supply prices.

SFAs are subject to the Program-specific procurement regulations in 7 CFR 210, 226, and 250 and Federal procurement standards, at 2 CFR 200.318-327. This memorandum provides SFAs with key information which may be used to conduct noncompetitive procurements when experiencing certain supply chain disruptions as a result of COVID-19.

This memorandum includes questions and answers intended to provide clarification to State agencies and SFAs as they utilize the noncompetitive procurement method found at 2 CFR 200.320(c).

FNS appreciates the exceptional efforts of State agencies and SFAs working to meet the nutritional needs of children during this challenging time. State agencies are reminded to distribute this memorandum to Program operators immediately. Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

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1. May an SFA use noncompetitive procurements when experiencing certain supply chain disruptions?

Yes, the noncompetitive procurement method in 2 CFR 200.320(c) may be used when a “public exigency or emergency” prevents an SFA from undertaking a competitive procurement. Circumstances, such as the unanticipated cancellation of food and supply contracts, have the effect of creating an emergency for an SFA participating in the Child Nutrition Programs.

SFAs do not need to request a waiver or receive State agency approval to utilize the emergency noncompetitive procurement method and may use this procurement method as long as the supply chain disruption occurs. For example, if an SFA experiences an unanticipated food order cancellation, the SFA may go to the local grocery to purchase food as many times as they need using the emergency procurement method until their next food order arrives. The SFA could also do an emergency one-year sole source emergency procurement to ensure they have food the entire school year.

Noncompetitive procurements are an exception to the requirement for full and open competition and USDA approval is not required. However, consistent with procurement regulations at 2 CFR 200.318(i), SFAs should document their justification for using noncompetitive procurement, comply with other procurement requirements, and ensure that costs are necessary, reasonable, and allocable.

2. When does the emergency noncompetitive procurement method apply and for how long?

Use of the emergency noncompetitive procurement method is only allowable during the actual public exigency or emergency circumstance. Circumstances vary for each incident, often making it difficult to determine in advance a particular timeframe when noncompetitive procurements may be warranted. Because noncompetitive procurement is available only while the public exigent or emergency circumstances exist, SFAs should, upon awarding a noncompetitive contract, begin the process of competitively procuring goods and services to transition to the competitively procured contracts as the exigency or emergency circumstances cease to exist.

3. Do micro-threshold purchase thresholds apply when an SFA uses the emergency noncompetitive procurement method?

No, micro-purchase thresholds outlined in 2 CFR 200(a)(1) do not apply to the emergency noncompetitive procurement method, and there is no limit to the number of times an SFA may use this procurement method for the duration of the supply chain disruption.

4. What documentation should an SFA develop and maintain to support the use of the emergency noncompetitive procurement method?

Consistent with procurement regulations at 2 CFR 200.318(i), SFAs should retain information, data, and documents which qualify specific conditions and emergency circumstances which resulted in the decision to use the emergency noncompetitive procurement method and the procurement process, itself. Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on exigency or emergency circumstances. SFAs should maintain documentation in their procurement files. Documentation must include an explanation of the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

The following items are examples that would support the documentation requirements:

- Documentation showing that the distributor, processor, or other supplier cancelled of food or supply contracts, deliveries, or orders;
- Documentation showing that the distributor, processor, or other supplier is no longer able to provide food as ordered, or failed to consistently deliver goods.

In addition, SFAs should retain documentation providing information on the food and supplies (e.g., delivery, processing, other) being procured, including the estimated quantity and dollar value of the emergency procurement; and how the emergency procurement was handled, i.e., obtained through negotiation, phone, email, etc. Note that documentation does not need to be specially created for this purpose; materials created as part of the purchase will suffice if they contain the necessary information.

NOTE: Separate documentation is required for each noncompetitive procurement process, not item, undertaken by an SFA as a result of a COVID-19 supply chain disruption.

5. Can an SFA award a cost-plus-a-percentage-of-cost contract in exigent or emergency circumstances?

No. Cost-plus-a-percentage-of-cost contracts are prohibited regardless of the circumstances pursuant to Federal procurement regulations at 2 CFR 200.324(d).

6. Can SFAs piggyback onto existing contracts in exigent or emergency circumstances?

Yes, SFAs may piggyback onto existing contracts during an exigency or emergency. SFAs should determine whether the existing contract has a provision allowing “piggybacking” to avoid a material change. For more information on contract piggybacking please see [SP05-2017; CACFP03-2017; SFSP02-2017](#).

7. Can SFAs use emergency noncompetitive procurement if they operate CACFP at-risk supper Program?

Yes, SFAs may use emergency procurement when making purchases for any Child Nutrition Program including, the CACFP at-risk supper Program