

# Nutrition Programs Emergency Procurement Fact Sheet

The noncompetitive procurement method (2 CFR 200.320(c)) is a procurement flexibility that allows for noncompetitive procurement under specific circumstances, which include emergency situations. Prior approval from the State Agency is not required, nor is a waiver required to use noncompetitive procurement in emergency situations. School Food Authorities (SFAs) may conduct noncompetitive procurement in emergency circumstances such as:

- Unexpected Contract Gaps – A contract unexpectedly ends or is unable to be filled even though the SFA goes through the proper procurement steps.
  - Acceptable examples include:
    - A vendor under an existing contract contacts the SFA and explains that, due to staffing or supply shortages, the vendor is no longer able to provide goods/services to the SFA.
    - A SFA conducts formal procurement, advertises a Request for Proposal or Invitation to Bid for goods/services, and no vendor responses are received. Feedback from potential vendors is that a bid or proposal was not submitted due to current market conditions (i.e. staffing or supply chain issues).
- Supply Chain Issues – A vendor under an existing contract experiences product shortages, whether an out-of-stock item with no substitute item available, or out-of-stock items with no acceptable substitute, and the SFA needs to quickly procure the goods/services from alternative vendors.
  - Acceptable examples include:
    - A vendor under an existing contract notifies the SFA that canned peaches will not be delivered with tomorrow's order, and there is no substitute canned fruit available to replace it with. The SFA is not going to have enough fruit for the week's menu and therefore, places an order with the local Sam's Club or BJ's for #10 cans of fruit.
    - A vendor under an existing contract notifies the SFA that whole grain-rich chicken patties are out-of-stock and a pork rib patty is offered as a substitute. The SFA declines the substitute item and contacts another wholesale food distributor, who has acceptable chicken patties and places an order.
- Drastic Price Inflation – A vendor under an existing contract drastically increases prices due to supply chain issues and the updated pricing would be unreasonable, unaffordable, and/or not allowable based on the contract terms.
  - An acceptable example of noncompetitive procurement would include –
    - A vendor under an existing contract increases prices on paper products by 25% or more; the SFA can find the same product, or equivalent, from a different regional paper supply company close to the prices they would have paid under their current contract. The SFA places an order with the alternative regional paper supply company for the items.

Additional Important Notes Regarding Noncompetitive Procurement:

1. **Documentation must be maintained.** Acceptable documentation includes proof of vendor cancellation of the contract, proof of vendor out-of-stocks (emails, invoices), and/or proof of higher pricing. Documentation must be maintained by the SFA and provided to the State Agency upon request (for example, during an Administrative Review).
2. **The Meal Pattern Waiver is available.** SFAs should contact the State Agency to participate in the meal pattern waiver if needed. For example, supply chain issues may lead to whole grain-rich items being substituted with non-whole grain-rich items, or may result in frozen broccoli being substituted with frozen corn. In these cases, the SFA planned to meet the whole grain-rich requirement and vegetable subgroup requirement but has to accept the substitutes in order to have food to serve to the students.
3. **Reminder - Buy American Provision Exceptions are available.** Exceptions when non-domestic foods may be purchased are available and SFAs should keep this in mind, especially when supply chain issues occur and domestic products on contract are substituted with non-domestic products. Documentation when exceptions are used must be maintained and only needs to be provided to the State Agency upon request (for example, during an Administrative Review). Two exceptions that can be used, and are determined by the SFA, are:
  - The food or food product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality; or
  - Competitive bids reveal the cost of a United States food or food product is significantly higher than the nondomestic product.

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