

# OSPI CNS School Meal Programs Reference Sheet

## Noncompetitive Procurement

All USDA grant and award programs are subject to the Federal procurement standards found in 2 CFR 200.318 – 200.327 and the applicable program regulation. Recognizing that USDA's recipients and subrecipients may face exigencies or emergencies when carrying out a USDA award; this reference sheet will provide key information to consider when utilizing contracted resources under exigent or emergency circumstances.

Current Federal procurement standards (found at 2 CFR 200.320(c)) allow School Food Authorities to noncompetitively procure contracts (i.e., sole-sourcing) under certain emergency or exigent circumstances.

### Definition of Public Emergency:

Unexpected and unusually dangerous situations requiring immediate action or an urgent need for assistance or relief. Emergencies typically involve a threat to life, public health or safety, improved property, or some other form of dangerous situation.

### Definition of Public Exigency:

An urgent need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise.

Under both an emergency and exigency, using a competitive procurement process would prevent a School Food Authority from taking immediate action required to address the situation. However, use of the emergency/exigency exception is only permissible during the actual emergency or exigent circumstances.

### What is the exigency or emergency exception?

Federal regulations allow for noncompetitive procurements under certain circumstances, including when a School Food Authority determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation. This represents an exception to the requirements for full and open competition. USDA or the State Agency approval is not required for use of noncompetitive procurements under the emergency or exigency exception; however, the School Food Authority must document its justification for using noncompetitive procurements and must still comply with other procurement requirements and ensure that costs are reasonable.



### **When does the exigency or emergency exception apply and for how long?**

Use of the public exigency or emergency exception is only permissible during the actual exigent or emergency circumstances. Exigency or emergency circumstances will vary for each incident, making it difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. School Food Authorities must ensure that goods or services provided under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in effect at the time of procurement. Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, School Food Authorities should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.

### **What documentation is required to support the use of the exigency or emergency exception?**

While USDA or the State agency approval is not required for a School Food Authority to use noncompetitive procurement proposals under the emergency or exigency exception, School Food Authorities must document and provide justification for the use of the exigent or emergency exception.

### **Do any Federal procurement requirements apply if a non-Federal entity is sole-sourcing a contract under exigent or emergency circumstances?**

Yes, School Food Authorities must comply with the requirements in 2 CFR 200.318-327 and applicable program regulations even when exigent or emergency circumstances exist.

#### **Resources**

- 2 CFR 200.320(c)

#### **Acronym Reference**

- CFR – Consolidated Federal Regulations
- CNS - Child Nutrition Services
- OSPI - Office of Superintendent of Public Instruction
- USDA - United States Department of Agriculture