



Alabama State Department of Education Child Nutrition School Meals Program

Guidance for Milk Disruptions and Emergency Procurement



Milk Disruptions: Request to Serve School Meals without Milk

SFAs notified of milk delivery issues must follow these steps to request permission to serve school meals without milk. ALSDE will approve documented milk disruptions for up to two weeks at a time unless there is a significant reason to extend the period.

1. Obtain documentation from the provider stating the milk disruption and a potential period of time.
2. Email cnpslp@alsde.edu to request permission to serve school meals without milk for the specified period.
3. ALSDE will issue an approval letter for a two-week period. If more time is needed, send a second request.
4. Determine if shelf-stable milk or milk from another provider can be purchased. Ensure the milk bid specifies if off-bid purchases are allowed during disruptions.
5. If the bid language does not support off-bid purchases during a milk disruption, submit an emergency procurement request before buying milk from another provider.

NOTE: Before proceeding with emergency procurement, SFAs should examine all bids to confirm that the following Force Majeure clause is included, allowing for off-bid purchases in emergency situations.

- Any of the following such occurrence(s) shall be referred to as a Force Majeure: war, riot, acts of public enemies, or other disorders, strike or labor of other work stoppage, fire, flood, natural disasters, epidemics, pandemics, Acts of God, or any other act not within the control of the party whose performance is interfered with or material shortage is a result of, and which, by reasonable diligence, such party is unable to prevent.
- In the event of a Force Majeure the distributor will take all reasonable steps to continue to provide service upon the terms and conditions satisfactory to the distributor and the [SFA]. Neither the distributor nor [SFA] shall be responsible for any losses resulting from failure to perform any terms or provisions of the contract, except for payments of monies owed, if the party's failure to perform is attributable to circumstances beyond the reasonable control during product availability disruptions.
- If not, the SFA must submit a request for emergency procurement before purchasing goods from another source.

State of Alabama Emergency Procurement for City and County Boards of Education

During an emergency or unanticipated event affecting public health or safety or causing supply chain disruptions, and upon the recommendation of the State Superintendent of Education and the approval of the Department of Examiners of Public Accounts, any city or county board of education that provides meals under the Child Nutrition Program of the Alabama State Department of Education may purchase goods or services related to the program without advertising or bidding as set forth in the law. The city or county board of education must maintain accurate and fully itemized records of all expenditures made according to the law. Approval will be limited to **60 days**, during which time a contractual agreement for such purchases shall be entered into in compliance with the competitive bid law. **Act 2022-264, appearing as Section 16-13B-2.1, Code of Alabama, 1975.**

Instructions for Emergency Procurement

1. All city or county board of education CNP Directors must immediately communicate with the local superintendent to inform them of the need for emergency procurement to purchase goods.
2. The local superintendent will draft a letter to the state superintendent to request the use of emergency procurement. The letter must contain a statement setting forth the specific facts regarding the basis of the unanticipated event causing the supply chain disruptions including:
 - a. the geographical region or area to which the emergency should be limited,
 - b. enrollment for the district, and
 - c. average cost of the goods for the National School Lunch Program and School Breakfast Program and/or other Child Nutrition Programs operated by the SFA.
3. The state superintendent will make the recommendation to the Department of Examiners of Public Accounts.
4. The Department of Examiners of Public Accounts will send a letter approving the request.

Consistent with Federal procurement regulations at 2 CFR 200.318(i), SFAs should retain information, data, and documents, which qualify specific conditions and emergency circumstances 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.

The SFAs should maintain documentation in their procurement files.

Documentation must include:

1. explanation of the rationale for the method of procurement,
2. selection of contract type,
3. contractor selection or rejection,
4. and the basis for the contract price.

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

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