

## Child Nutrition Programs

### Emergency Contract Amendment for School Year 2022-2023 Guidance

#### Food Management Services/ Vended Meals Services

Due to the current market conditions and feedback from SFAs, SFAs may negotiate with their FSMC/Vendor to adjust their current contracted rates under an emergency contract amendment. The Emergency Contract Amendment would allow rate to reflect current market pricing and/or the addition of another Federally funded Child Nutrition program if it was not in the original contract.

We understand that, in some cases, there has been a significant industry increase in costs (such as additional packaging requirements, additional transport equipment, the Illinois mandated fixed minimum wage increase, etc.) based on the individual SFA needs. It is the SFA's responsibility, as stewards of these federal funds, to take an active role in the negotiation of any such increases. The SFA **must** ensure that the increase is based on a financial/cost analysis of your specific district needs. The SFA must ensure that the increased costs only include costs that are an allowable use of the nonprofit school food service account and costs specific to the production of the reimbursable meals served. The final rate must be based on all of these factors and must be of mutual agreement between both parties

ISBE recommends and encourages the SFA to consult the SFA's legal counsel to ensure compliance with all local, state and federal statutes and policies before implementing this Emergency Contract Amendment for School Year 2022-2023.

This amendment is **REQUIRED** if, due to current market conditions, the SFA is adding any additional Federally funded Child Nutrition Programs and/or both parties agree to any rate adjustments and the attached form **must** be submitted to ISBE for approval prior to utilizing Child Nutrition Program funds to pay for any meals or services outside of the original contract. The ISBE Emergency Contract Amendment for School Year 2022-2023 form **must** be used for submission. No other amendment agreement or documentation will be accepted.

- The ISBE Emergency Contract Amendment for School Year 2022-2023 form must be submitted by the SFA, not the FSMC/Vendor, based on your negotiations.
- Applicable dates must align with the original contract and shall not exceed June 30, 2023.
- Per meal rates must be calculated as if no USDA commodities will be received.
- All rates must be a fixed price per meal based and all modified rates must be based on a financial/cost analysis and need to increase pricing based on food, supplies, and Illinois Fixed Minimum wage increase that are above and beyond the contracted CPI index.

Please Note: ISBE is **not** requiring the SFA to enter into this Emergency Contract Amendment for school year 2022-2023 for rate adjustments. SFAs may utilize this Emergency Contract Amendment at their discretion if they are anticipating additional costs due to the current market conditions and/or student/family needs. If the SFA determines through the required financial/cost analysis that there would be allowable increases in costs for the meal service(s), then the SFA can choose to allow this Emergency Contract Amendment, in order to prevent conducting a new procurement. If the SFA determines they wish to allow the amendment, the attached Emergency Contract Amendment form for School Year 2022-2023 must be completed, signed by both parties and submitted to ISBE.

If you have questions concerning the Emergency Contract Amendment for School Year 2022-2023, please contact Program Staff at [nutritionprocurement@isbe.net](mailto:nutritionprocurement@isbe.net).

## Child Nutrition Programs

### Emergency Contract Amendment for School Year 2022-2023 Question and Answers Food Management Services/ Vended Meals Services

Updated September 2022

**Q1: Are we, the School Food Authority (SFA), required to enter into the Emergency Contract Amendment with our FSMC/Vendor?**

**A:** ISBE is not requiring the SFA to enter into this Emergency Contract Amendment for school year 2022-2023 for rate adjustments. SFAs may utilize this Emergency Contract Amendment at their discretion if they are anticipating additional costs due to the current market conditions and/or student/family needs. If the SFA determines through the required financial/cost analysis that there would be allowable increases in costs for the meal service(s), then the SFA can choose to allow this Emergency Contract Amendment, in order to prevent conducting a new procurement. If the SFA determines they wish to allow the amendment, the attached Emergency Contract Amendment form for School Year 2022-2023 must be completed, signed by both parties and submitted to ISBE.

**Q2: Who should fill out the Emergency Contract Addendum for School Year 2022-2023?**

**A:** It is the intent that the SFA should initiate the Emergency Contract Amendment for school year 2022-2023. It is the SFA's responsibility, as stewards of these federal funds, to take an active role in the negotiation of any such increases. The SFA must ensure that the increase is based on a financial/cost analysis of your specific district needs. The SFA must ensure that the increased costs only include costs that are an allowable use of the nonprofit school food service account and costs specific to the production of the reimbursable meals served. The final rate must be based on all of these factors and must be of mutual agreement between both parties

**Q3: Can the terms of the Emergency Contract Addendum for School Year 2022-2023 go back to the beginning of the school year?**

**A:** Any Emergency Contract Amendment for school year 2022-2023 submitted can only be effective date will be the first day of the submission month. Example if the Emergency Contract Amendment for school year 2022-2023 is submitted on October 29<sup>th</sup>, 2022, that effective date of the amendment will be October 1, 2022.

**Q4: When is the ending date for the Emergency Contract Addendum for School Year 2022-2023?**

**A:** The Emergency Contract Amendment for school year 2022-2023 will end on June 30, 2023, or sooner if indicated by the SFA, for all contracts.

**Q5: Since our labor needs might fluctuate, can the labor costs be billed outside the meal rate?**

**A:** No. All labor costs must always be included in the price per meal for all fixed price contracts based on the financial analysis. This includes the previous allowable billback of the Illinois fixed minimum wage billback. The Illinois fixed minimum wage rates must now be included in the new fixed meal rate and cannot be billback as a separate line item on the monthly invoice.

**Q6: What if we (the SFA) do not agree with the requested price adjustment, or the requested price adjustment does not fit into our budget what are our options as an SFA?**

A: If both parties can not come to a mutual agreement of a fixed price per meal rate based on a financial/cost analysis specific to the local SFA needs, both parties can elect to terminate the partnership. The SFA then can conduct an emergency purchase, with **any** FSMC/Vendor that is able to provide the services the district requires for the time period needed, to continue uninterrupted food service using noncompetitive procurement methods. This type of procurement or purchase is short-term in duration (maximum one school year), which means these contracts **cannot** be renewed for the following school year regardless of any current contracted renewal options or potential USDA waivers or flexibilities regarding contract extensions. The district will be placed on a mandatory rebid list for a new contract starting SY 2023-2024

**Q7: When is a financial/cost analysis required and who is supposed to complete it?**

A: A detailed financial/cost analysis must be performed and submitted by the FSMC/Vendor to the SFA if price changes should occur during the life of a contract. The SFA must ensure that the FSMC/Vendor has completed the financial/cost analysis and that appropriate supporting documentation is provided to the SFA and maintained on file and available upon request by ISBE or the USDA.

**Q8: How do I submit my Emergency Contract Amendment for School Year 2022-2023?**

A: Via email to [nutritionprocurement@isbe.net](mailto:nutritionprocurement@isbe.net)

**Q9: Do amendments need to include all of these rates or just the ones that the SFA believes will apply to them this year? ex. if I am not going to do SFSP this summer or next summer can I leave those rates empty?**

A: The SFA is not required to include all of these rates. However, ISBE does encourage that the SFA and FSMC/Vendor discuss all of the rates just in case the SFA determines at a later date that there is a need. Although all rates are not required conducting a financial/cost analysis and negotiating all of the rates could eliminate the need to complete another amendment later in the school year if an unforeseen need were to arise.