

SUBJECT: Agreements and Contracts

- A. Purpose.** This policy identifies the agreements and contracts that must be executed before a recipient agency can receive donated food from USDA.
- B. Scope.** The Bureau shall execute written agreements/contracts with all recipient agencies (RAs), warehouses, carriers or other entities to which the Bureau delivers donated food under the USDA Food Distribution Program.
- C. Authority.**
1. 7 CFR 250.12, Agreements and Contracts.
 2. SERO, USDA, Policy Memorandum 250.13-06
 3. USDA National Policy Memorandum FD-80, Guidance for, and Use of, Donated Foods in Contracts With Food Service Management Companies
 4. USDA National Policy Memorandum FD-104, Value of USDA Donated Foods for Audits

D. Terms and Conditions.

1. All agreements will contain such terms and conditions as the Bureau deems necessary to ensure that:
 - (a) The distribution and use of donated foods is in accordance with USDA regulations.
 - (b) RAs, warehouses, carriers or other entities to whom donated foods are delivered by the Bureau are responsible to the Bureau for any improper distribution or use of donated foods or any loss of, or damage to donated foods caused by their fault or negligence.
 - (c) RAs have and preserve the right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution. Recipient agencies will take action to obtain restitution in connection with claims for proper distribution, use or loss of, or damage to, donated foods.

E. Duration.

1. Recipient Agencies. Bureau agreements with recipient agencies are considered permanent, with amendments to be made as necessary. Recipient agencies must provide, on a timely basis, by amendment to the agreement, any changed information, including, but not limited to, any changes resulting from amendments to Federal regulatory requirements and policy and changes in site locations and number of meals or needy persons served.
2. Termination of Agreements. Agreements may be terminated for cause by either party upon 30 days notice.

F. Food Service Management Company Contracts (FSMC). – Procurement of FSMC and the contract must be approved by Florida Department of Education.

1. FSMCs may be employed to conduct the food service operations of nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, schools, nonresidential child care institutions and service institutions.
2. When an FSMC is employed to provide such services, the RA will execute a written contract with the food service management company that will expressly provide:
 - (a) The beginning and ending dates of the contract.
 - (b) Any donated foods received by the RA and made available to the food service management company will be used solely for providing benefits for the RA's food service operation and it is the responsibility of the RA to show that the full value of all donated foods is used solely for the benefit of the RA.
 - (c) The FSMC will comply with all applicable policies and procedures in this manual.
 - (d) The FSMC shall provide insurance for the maximum value of the RA's Planned Assistance Level (PAL).
 - (e) The contract may be cancelled for cause upon 30 days notice.

The books and records of the FSMC involving the food service operation of the RA must be available for 4 years from the close of the fiscal year to which they pertain.

3. Value of Commodities Used by Food Service Management Companies.
 - (a) Contract Provisions. Contracts with FSMCs usually call for the price of the meal to be reduced by the value of any commodities used in the meal since

they have not been provided by the FSMC operation. The major problem that arises most frequently in situations such as this is determination of the value to be assigned to each commodity in order to reduce the cost of the meal to the food service operation.

(b) Value to be Used. Any commodities received by the recipient agency and made available to and used by FSMCs are to be assigned one value per commodity. **Any food service operation entering into a contract with an FSMC must ensure that the appropriate commodity value is assigned based on either the Fair Market Value (FMV) of USDA foods at time of receipt or one of the USDA's acceptable methods for valuing USDA foods from 7 CFR 250.58(e):**

- (i) The USDA purchase price (cost-per-pound);
- (ii) The estimated cost per pound data provided by the USDA upon requisitioning of commodity products;
- (iii) The USDA commodity file cost on the November 15th commodity file report.

G. Storage Facility Contracts. When RAs contract with commercial warehouses for the storage of USDA donated commodities, the contract must comply with the requirements of 7 CFR 250 and this manual. Since the Bureau is not a party to these contracts, the RA is held responsible for ensuring that commodities are received, unloaded, handled and stored in accordance with the requirements of this manual. The RA is also responsible for any improper distribution/use or loss/damage of donated foods caused by the warehouse. RA's storage contract with a warehouse must be in compliance with 7 CFR 250.14. A copy of the contract must be filed with the Bureau prior to any commodities being ordered for delivery to that facility.

H. Processing Contracts. When contracting for the processing of donated foods, RAs must enter into contracts with processors in accordance with 7 CFR 25- and the Florida Department of Agriculture and Consumer Services Policy and Procedures 250.30. RA's must comply with the federal, state and local competitive procurement requirements.