

## Chapter 8:

### Contract Duration/Renewals

#### Duration

As stated earlier, the contract duration must be limited to one year, with the effective beginning and ending dates stated in the contract. The beginning date should not be prior to the date the contract is signed. Additionally, if renewals will be permitted, the contract must also state the date by which the renewal must be executed by both the SFA and FSMC.

Although a maximum of four one-year renewals are permitted, contracts cannot contain automatic renewal provisions. The renewal date must occur on or prior to the expiration date of the current contract. Any provisions, including adjustments to payments, which will be used for renewing a contract must be stated in that contract and the IFB or RFP, as applicable. These alterations cannot result in substantive changes to the original contract. If the SFA determines that significant changes that are material in nature are necessary, then the SFA must rebid the contract.

Please note that contracts (including all supporting documentation) between any SFA and FSMC must be reviewed annually by the State agency prior to execution of the contract by either party to ensure compliance with all the provisions and standards set forth in this part. SFAs must include the following provision, or language that is tantamount to this provision, in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts: Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority.

#### Renewals

While contract renewals are permitted, a SFA is not required to renew the contract for an additional year and should do so only after careful evaluation of the FSMC's performance and a determination that the renewal will benefit the SFA.

In the case of contract renewals, SFA must ensure that any changes to the contract do not result in a material change the terms and conditions of the original contract. A material change is any change made to a contract after it has been awarded that alters the terms and conditions of that contract

substantially enough that had other respondents known of these changes in advance, they could have bid differently and more competitively. This means that when a school food authority agrees to or allows a winning bidder to make changes to contract terms (including the terms of a contract renewal) that are materially inconsistent with the underlying solicitation document, the school food authority has subverted full and open competition by denying all bidders the opportunity to compete under the same terms and conditions. In this situation, the SFA must re-bid the contract.

The SFA's contract with the food service management company must include all of the provisions listed in 7 CFR 250.53, as applicable. In accordance with 7 CFR 250.52(c), when a contract terminates, and is not extended or renewed, the food service management company must return all unused donated ground beef, donated ground pork, and processed end products, and must, at the SFA's discretion, return other unused donated foods. The SFA must also ensure that the food service management company has credited it for the value of all donated foods received for use in the SFA's food service in the school year.

Among the elements that should be used when deciding whether to renew a contract are:

**Performance**—the overall performance of the FSMC in accordance with the contract provisions, including the FSMC's completion of planned activities as described in the contract. The SFA should document its findings while conducting its monitoring requirements of the FSMC and refer to these documents when making this determination. In addition to reviewing the deficiencies noted in the FSMC's performance, the SFA should review the effectiveness of the FSMC's corrective action plans.

**Meal Quality**—meal quality, including adherence to menu cycle/food specifications, and complaints.

**Costs**—the full cost of using a FSMC versus the projected costs under the contract.

**Financial Status**—the overall financial status of the food service operation and the food service account.

**Unexpected Costs**—any unexpected costs incurred as a result of using a FSMC, and any unexpected cost reductions that have resulted from using a FSMC. The SFA should ascertain these costs based on information received from the FSMC and other sources.

**Participation**—participation trends including NSLP/SBP participation compared to a la carte sales.

**Advisory Board**—the comments and recommendations of the advisory board and the FSMC's responsiveness to these recommendations.

**Adjustments to Payments**—any increase in the prices requested by the FSMC or any change in the basis upon which the FSMC is paid.

**Crediting for the Value of USDA Donated Foods**—assurance of crediting for the value of all donated foods received for use in the SFA's meal service in the school year, in accordance with 7 CFR 250.51(a) and (b).

**Corrective Actions**—recommendations from local, State, and Federal reviews and audits, including the status of required corrective actions.