

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: July 22, 2014	<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
	<input type="checkbox"/>	Ordinance	<input type="checkbox"/>	Public Hearing

Department
Submitted By: Community Services
Submitted For: Division of Senior Services (DOSS)

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

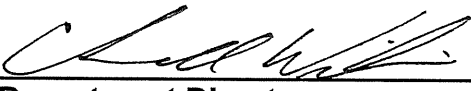
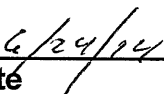
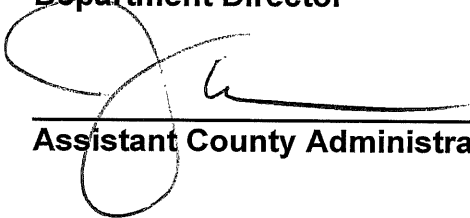
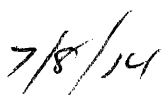
- A)** Amendment 001 to Permanent Contract No. Y4119 (R2013-1543) for Adult Care Food Program (ACFP) with the State of Florida, Department of Elder Affairs (DoEA) to revise and replace Attachment II of the contract for language changes and administrative review procedures; and
- B)** Amendment 002 to Permanent Contract No. Y4119 (R2013-1543) for ACFP with DoEA to amend the Table of Contents and add Attachment VI, ACFP Liquidated Damages.

Summary: These amendments are necessary to incorporate changes made to Permanent Contract No. Y4119 (R2013-1543). ACFP provides community-based adults with nutritious meals that improve their nutritional status and allow them to remain in their communities. The program targets low-income persons, and participants receiving Medicaid, Food Stamps, and/or Supplemental Security Income (SSI). ACFP provides two (2) meals and one (1) snack per day to adult day care clients, in an effort to maintain or improve the adult participant's quality of life. No County match is required. (DOSS) Countywide (TKF)

Background and Justification: ACFP provides meal reimbursements to approved providers for servicing eligible adult day care participants. ACFP is a component of the federally funded Child and Adult Care Food Program, operated nationally by the USDA and administered at the state level, by DoEA.

Attachments: Amendments (2)

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Recommended By:		
	Department Director	Date
Approved By:		
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures					
Operating Costs					
External Revenue					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included in Current Budget? Yes X No
Budget Account No.:
Fund 1006 Dept 144 Unit 1479 Object Var. Program Code Var. Program Period Var.

B. Recommended Sources of Funds/Summary of Fiscal Impact:
No Fiscal Impact

C. Departmental Fiscal Review: mm
Taruna Malhotra, Director, Financial & Support Svcs

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB 6/25/14
6/25/14 6/25/14 6/25/14

Contract Development and Control 7/7/14
7-7-14 Blotnick

B. Legal Sufficiency:

Chief Assistant County Attorney 7/7/14
Chief Assistant County Attorney

C. Other Department Review:

Department Director
Department Director

This summary is not to be used as a basis for payment.

This AMENDMENT entered into by the State of Florida, Department of Elder Affairs (Department), and Palm Beach County Board of County Commissioners (Contractor), amends contract Y4119.

The purpose of this amendment is to revise and replace ATTACHMENT II of the Permanent Contract.

_____ Line denotes completion of above summary _____

INDEX TO CONTRACT ATTACHMENTS:

(1) Attachment II is hereby replaced with the revised Attachment II and attached hereto.

This amendment shall be effective on the last date that the amendment has been signed by both parties.

All provisions in the agreement and any attachments thereto in conflict with this amendment shall be and are hereby changed to conform to this amendment.

All provisions not in conflict with this amendment are still in effect and are to be performed at the level specified in the agreement.

This amendment and all of its attachments are hereby made a part of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this 4 page amendment to be executed by their officials there unto duly authorized.

**CONTRACTOR: PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS**

**STATE OF FLORIDA,
DEPARTMENT OF ELDER AFFAIRS**

SIGNED BY: _____

SIGNED BY: _____

NAME: Priscilla A. Taylor

NAME: CHARLES T. CORLEY

TITLE: Mayor

TITLE: SECRETARY

DATE: _____

DATE: _____

FEDERAL ID NUMBER: 596000785

FISCAL YEAR END DATE: 9/30

**ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER**

**APPROVED AS TO TERMS
AND CONDITIONS**

BY: 
DEPARTMENT HEAD

By: _____
Deputy Clerk

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Chief Assistant County Attorney

SERIOUS DEFICIENCY PROCEDURES FOR
ADULT CARE FOOD PROGRAM CONTRACTORS

This attachment incorporates the most common examples of serious deficiencies listed in Title 7 Code of Federal Regulations Part 226 and provides example descriptions of non-compliance with program requirements. The list of deficiencies shall be updated from time to time in contract amendment pursuant to the terms of this Contract. Contractors who commit or engage in any serious deficiencies described in the federal and state laws, regulations, procedure manuals and policies shown in Section I of this Contract, including but not limited to those incorporated herein, shall be subject to termination and disqualification from the Florida Department of Elder Affairs, Adult Care Food Program (ACFP).

LIST OF SERIOUS DEFICIENCIES

1. Submission of false information to the Department and/or filing claims based on false or fraudulent records
- Failure to disclose ineligible officers, directors, key employees

• Listing fictitious employees/officers/board members on an application

• Claiming tax-exempt status when denied, rescinded, or in any fashion no longer available

• Submitting the IRS tax-exempt determination letter of a different or defunct organization

• Concealing a conviction for any activity occurring during the previous seven years that indicates a lack of business integrity

• Falsification of documentation to support claims

• Falsification of information or documents in order to obtain and/or maintain ACFP participation
2. Permitting an individual on the USDA National Disqualified List to serve in a principal capacity with the Contractor or at a facility sponsored by the Contractor
3. Failure to operate the ACFP in conformance with performance standards established in Title 7 Code of Federal Regulations Part 226.6(b)(2)(vii), regarding financial viability and financial management, administrative capability, and program accountability
- Failure to ensure provision of adequate financial resources for daily program operations

• Failure to maintain adequate funds to withstand temporary interruptions in program payments and/or fiscal claims against the Contractor

• Failure to maintain an adequate number and type of qualified staff to ensure proper ACFP operations

• Failure to establish and implement internal controls and other systems to ensure fiscal accountability

• Failure of the Board of Directors to provide adequate program oversight
4. Failure to maintain adequate records
- Failure to maintain appropriate records to document compliance with ACFP requirements including budgets, approved budget amendments, and when applicable, management plans and records pertaining to facility operations

• Consistently missing/incomplete records during different reviews, complaint investigations, or audits

• Missing/incomplete/incorrect invoices, receipts, canceled checks, inventories resulting in false/inflated/unsubstantiated claimed costs

• Cost records not maintained according to generally accepted accounting principles resulting in false/inflated/unsubstantiated claimed costs
5. Failure to adjust catered meal orders to conform to variations in the number of participants
- Claiming meals based on the number of meals ordered/planned or the number of participants on the center roster, rather than the number of meals actually served
6. Non-compliance with applicable bid procedures and contract requirements of federal Adult Nutrition Programs
- Failure to competitively procure goods and services

• Anti-competitive practices, such as collusion, kickbacks, conflicts of interest

• Inclusion of non-competitive provisions in a bid, e.g., "successful bidder for a contract to provide meals must establish a scholarship fund"
7. Claiming reimbursement for meals not served to participants

- *Claiming meals delivered or planned for as meals served to participants*
 - *Claiming meals for participants not present on a given day or for a particular meal*
 - *Claiming meals served to non-existent adults*
 - *Claiming meals served to non-enrolled adults or to staff*
 - *Inflating meal counts*
 - *Claiming non-existent and non-participating facilities*
 - *Claiming meals for ineligible facilities*
 - *Claiming dual participating facilities*
 - *Claiming the same participant for the same meal at more than one facility*
8. **Claiming reimbursement for meals that do not meet ACFP requirements**
9. **Use of a food service management company (caterer) that is in violation of health codes**
10. **Failure of a sponsoring organization to disburse payments to its facilities in accordance with its management plan and/or ACFP requirements**
- *Payments sent without endorsements or otherwise incomplete*
 - *Payments made for other than the full amount the supplying facility or vendor is entitled to*
 - *Payments made to a facility other than the facility that earned the payment*
 - *Payments made to an entity/person other than the facility without express written permission of the facility*
 - *Checks not mailed or direct deposits not initiated within 5 day timeframe of receipt of associated reimbursement from the Department or first business day thereafter*
 - *Failure to transfer full amount of facility payments to separate facility bank account within 5 working days of receipt from the SA time frame or failure to maintain full amount of facility payments in commingled bank account until checks clear*
 - *Using facility reimbursement funds to pay facility advances*
 - *Using day care home funds to pay sponsored centers or center funds to pay day care homes*
 - *Retaining sponsored center funds in excess of the percentage approved in the ACFP Budget*
11. **History of administrative or financial mismanagement in any USDA adult nutrition program**
- *Institution left another adult nutrition program (e.g. Summer Food Service Program, National School Lunch Program, etc.) because of a serious documented problem in its operation*
 - *Failure to maintain required corrective actions*
 - *Institution terminated for serious deficiency in one part of the ACFP (adult care center for example) applies to administer a different part (day care homes for example)*
12. **Claiming reimbursement for meals served by a proprietary adult care center during a calendar month in which less than 25 percent of its enrolled adult participants were title XIX or title XX beneficiaries.**
13. **Failure by a sponsoring organization to properly classify individuals or homes in the correct reimbursement category**
14. **Failure of a sponsoring organization to properly exercise its oversight responsibilities**
- *Failure to adequately monitor*
 - *Failure to require full, permanent, and systemic corrective actions*
 - *Failure to impose sanctions on centers, sites, or day care home providers when issues of noncompliance are identified*
 - *Failure to follow serious deficiency, suspension, termination, disqualification and appeal procedures, as applicable*
15. **The fact that the Contractor or any of its principals have been declared ineligible to participate in a publicly funded program due to violating that program's requirements except if the institution of the principal have been fully reinstated or is now eligible to participate in, that program, including the payment of any debts owed.**
16. **Failure to make payment(s) to subcontractor(s) for program services rendered**
- *Payments made for other than the full amount the subcontractor is entitled to*
 - *Checks not mailed within 5 business days after receipt of reimbursement or first business day thereafter*
 - *Using reimbursement funds claimed for subcontractor costs for purposes other than to make payment debt used to support the claim for reimbursement.*

- *Failure to make all reimbursement payments to subcontractors subsequent to the voluntary or involuntary termination of this Contract*
- *Failure to pay all outstanding debts incurred and claimed as part of the ACFP claims the Contractor submitted*

17. The following acts or omissions are also serious deficiencies:

- *Failure to retain and make available all records required under this Contract to the Department or appropriately designated entity*
- *Failure to make records associated with the ACFP available upon request at a reasonable time and place*
- *Failure to maintain current licensure requirements*
- *Misuse of ACFP funds*
- *Serious mismanagement (e.g. failure to monitor properly)*
- *Failure to obtain a required audit and/or submit audit reports to the Department within required time frames*
- *Failure to notify the Department of change in IRS status*
- *Violations of IRS regulations*
- *Failure to remit periodic payments (required by statute or regulation) to regulatory agencies (e.g. employee withholding for income taxes, social security, unemployment compensation)*
- *Failure to implement corrective action(s) within required timeframes*
- *Failure to follow-up/require and maintain corrective action for facility review findings*
- *Creating fictitious records*
- *Failure to make required repayment of program funds to the Department*
- *Failure to comply with state incorporation requirements*
- *Paying employees salaries based on the number of homes/centers recruited; paying recruitment bounties or bonuses*
- *Failure to attend training required by the Department*
- *Interfering or obstructing a Department on-site or program review of the Contractor's performance under the terms of this Contract*
- *Failure to immediately remove a responsible principal or responsible individual, an officer, executive director, ACFP manager, another manager or member of the board upon the individual's conviction for any activity that indicates a lack of business integrity as defined in Title 7 CFR §226 and to include fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, tax evasion, tax fraud, failing to file tax returns, passing worthless checks, submission of false or fraudulent information to a state or federal agency, and perjury or any other activity indicating a lack of business integrity*
- *Failure to obtain Department approval prior to entering into a ACFP related subcontract subsequent to execution of the Permanent Contract between the Contractor and Department*
- *Simultaneously performing services under this Contract and also operating as a registered caterer with the Florida Department of Elder Affairs selling catered meals to unaffiliated or affiliated ACFP Contractors and/or facilities*
- *Failure of a Contractor authorized individual to acknowledge site review findings by providing an authorized signature and/or written exceptions to findings on the site review form upon completion of the site review*

18. Failure to comply with any other financial and/or administrative requirements of Title 7 Code of Federal Regulations, Parts 226; 3015; 3016; 3019; and 3052, and/or failure to comply with applicable federal or Department of Elder Affairs ACFP rules, regulations, policies, instructions, procedures and/or manuals

This AMENDMENT entered into by the State of Florida, Department of Elder Affairs (Department), and Palm Beach County Board of County Commissioners (Contractor), amends contract Y4119.

The purpose of this amendment is to (1) amend the TABLE OF CONTENTS and (2) add ATTACHMENT VI.

_____ Line denotes completion of above summary _____

INDEX TO CONTRACT ATTACHMENTS:

- (1) The Table of Contents is hereby replaced with the revised Table of Contents and attached hereto.
- (2) Attachment VI is hereby introduced and attached hereto.

This amendment shall be effective on the last date that the amendment has been signed by both parties.

All provisions in the contract and any attachments thereto in conflict with this amendment shall be and are hereby changed to conform to this amendment.

All provisions not in conflict with this amendment are still in effect and are to be performed at the level specified in the contract.

This amendment and all of its attachments are hereby made a part of the contract.

IN WITNESS WHEREOF, the parties hereto have caused this three (3) page amendment to be executed by their officials there unto duly authorized.

**CONTRACTOR: PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS**

**STATE OF FLORIDA,
DEPARTMENT OF ELDER AFFAIRS**

SIGNED BY: _____

SIGNED BY: _____

NAME: Priscilla A. Taylor

NAME: CHARLES T. CORLEY

TITLE: Mayor

TITLE: SECRETARY

DATE: _____

DATE: _____

FEDERAL ID NUMBER: 596000785

FISCAL YEAR END DATE: 12/31

ATTEST:

**SHARON R. BOCK
CLERK AND COMPTROLLER**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
Deputy Clerk

BY: 
DEPARTMENT HEAD

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Chief Assistant County Attorney

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ATTACHMENT VI

ACFP LIQUIDATED DAMAGES

The Department of Elder Affairs will apply liquidated damages in accordance to: 7 C.F.R. §226.14 (2011).

Claims against institutions

(a) State agencies shall disallow any portion of a claim for reimbursement and recover any payment to an institution not properly payable under this part. State agencies may consider claims for reimbursement not properly payable if an institution does not comply with the recordkeeping requirements contained in this part. The State agency may permit institutions to pay over claims over a period of one or more years. However, the State agency must assess interest beginning with the date stipulated in the State agency's demand letter, or 30 days after the date of the demand letter, whichever date is later. Further, when an institution requests and is granted an administrative review of the State agency's overpayment demand, the State agency is prohibited from taking action to collect or offset the overpayment until the administrative review is concluded. The State agency must maintain searchable records of funds recovery activities. If the State agency determines that a sponsoring organization of centers has spent more than 15 percent of its meal reimbursements for a budget year for administrative costs (or more than any higher limit established pursuant to a waiver granted under §226.7(g)), the State agency must take appropriate fiscal action. In addition, except with approval from the appropriate FNSRO, State agencies shall consider claims for reimbursement not payable when an institution fails to comply with the recordkeeping requirements that pertain to records directly supporting claims for reimbursement. Records that directly support claims for reimbursement include, but are not limited to, daily meal counts, menu records, and enrollment and attendance records, as required by §226.15(e). State agencies shall assert over claims against any sponsoring organization of day care homes which misclassifies a day care home as a tier I day care home unless the misclassification is determined to be inadvertent under guidance issued by FNS. However, the State agency shall notify the institution of the reasons for any disallowance or demand for repayment, and allow the institution full opportunity to submit evidence on appeal as provided for in §226.6(k). Minimum State agency collection procedures for unearned payments shall include:

(1) Written demand to the institution for the return of improper payments; (2) if, after 30 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments sent by certified mail return receipt requested; and (3) if, after 60 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the institution to appropriate State or Federal authorities for pursuit of legal remedies.

(b) In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of §226.20, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect. However, the State agency shall not disregard any overpayments or waive collection action arising from the findings of Federal audits.

(c) If FNS does not concur with the State agency's action in paying an institution or in failing to collect an overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment, unless FNS determines that the State agency has conformed to this part in issuing the payment and has exerted reasonable efforts to recover the improper payment.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 50 FR 8580, Mar. 4, 1985; 53 FR 52590, Dec. 28, 1988; 62 FR 903, Jan. 7, 1997; 64 FR 72260, Dec. 27, 1999; 67 FR 43490, June 27, 2002; 69 FR 53544, Sept. 1, 2004; 76 FR 34571, June 13, 2011]

Attestation Statement

Agreement/Contract Number _____

Amendment Number _____

I, Priscila A. Taylor, Mayor, attest that no changes or revisions have been made to the
(Recipient/Contractor representative)

content of the above referenced agreement/contract or amendment between the Department of Elder Affairs
and

Palm Beach County Board of County Commissioners .
(Recipient/Contractor name)

The only exception to this statement would be for changes in page formatting, due to the differences in
electronic data processing media, which has no affect on the agreement/contract content.

Signature of Recipient/Contractor representative

Date

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Chief Assistant County Attorney

By: _____
Deputy Clerk

DOEA Contract Manager to initial and date indicating signatures/initials appropriate on all documents; ready
for DOEA Secretary/designee signature

initial date