

CONTRACT AMENDMENT

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED

5 Pages

Renewal (Extension Number)	1617-03
2	
Amendment	
A	

1. This Agreement is entered into between the School Food Authority and Contractor named below:
SCHOOL FOOD AUTHORITY'S NAME
Gilroy Unified School District
FOOD SERVICE MANAGEMENT COMPANY'S NAME
Sodexo America, LLC
2. The term of this Agreement
July 1, 2019 through June 30, 2020
3. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

NOTE: The following terms have been amended to reflect current federal regulation. The numbering is according to the CDE Sample Request for Proposal and Model Fixed-Price contract. If you did not use the CDE Sample Request for Proposal and Model Fixed-Price contract, please number these provisions appropriately for your existing contract. Keep all highlighted verbiage but remove the highlighting before submitting to CDE.

II. General Terms and Conditions

D. Contract Cost Adjustment (Note: Modifies previous clause)

The contract price (which can include General and Administrative Expense and Management Fees) may be increased on an annual basis by the Yearly Percentage Change in the Consumer Price Index for All Urban Consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home one CPI regional index: Western Region (CPI). Such increases shall be effective on a prospective basis on each anniversary date of this Contract and will be allowed only if approved in advance by the SFA. CPI Fee increases for the upcoming Contract renewal year must be submitted to the SFA.

The renegotiation of price terms under this Contract is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of both parties. If those conditions create a significant and material change in the financial assumptions upon which the price terms of this contract were based, then those price terms so affected may be renegotiated by both parties. Renegotiation of price terms under such conditions must be mutual and both parties must agree on any changes in price terms. Any adjustments so negotiated and agreed upon must accurately reflect the change in conditions. The occurrence of contingencies that are foreseeable and predictable, but not certain, should be calculated into the defined price terms, to the extent possible, with the goal of minimizing the need for renegotiation of price terms during the term of the Contract. Substantive changes of the Contract will require the SFA to rebid the Contract.

J. Subcontract/Assignment (Note: Modifies previous clause)

No provision of this Contract shall be assigned or subcontracted without prior written approval of the SFA. If subcontracts are let, the FSMC should have taken steps to contract with small

and minority businesses, women's business enterprises, and labor surplus area firms when possible.

Q. Sanctions (Note: Modifies Previous Clause)

If the FSMC fails to perform the contract terms;

- FSMC will be required to provide in writing to the SFA how they will ensure future contract compliance
- Continued nonperformance will result in termination of this contract
- FSMC may be prohibited from bidding on future contracts with the SFA

W. Breach of Contract (Note: New section)

For the breach of the Contract and associated benefits:

If the FSMC causes the breach, the FSMC assumes liability for any and all damages, including excess cost to the SFA in procuring similar services, and is liable for administrative, contractual, and legal remedies, as applicable.

X. Penalties (Note: New section)

Costs resulting from the SFA's violations, alleged violations of, or failure to comply with, Federal, State, tribal, local, or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the federal award, or with prior written approval of the federal awarding agency (2 *CFR*, Section 200.441).

IV. Food Service Program

B. School Food Authority Responsibilities

16. (**Note:** New clause) The SFA may not contract with the FSMC to provide only nonprogram food (e.g., a la carte and adult meals) unless the FSMC offers free, reduced price, and paid reimbursable lunches to all eligible children (7 *CFR*, Section 210.16[a]).

XIV. Buy American Requirements (Note: New section)

A. Food Service Management Company Responsibilities

1. The Food Service Management Company (FSMC) must submit statements for all processed agricultural products to the SFA at the time of delivery for each processed agricultural product certifying that the food product was processed 100 percent domestically and that the percentage of domestic content in the food component of the processed food product is over 51 percent, by weight or volume (USDA Policy Memo [SP 38-2017](#)).
2. The FSMC must notify the SFA in writing at least 10 days **prior** to delivering a nondomestic agricultural commodity or product and request prior approval for delivery of a nondomestic agricultural commodity or product. This written notification must list alternative domestic substitutes for the SFA to consider and provide an explanation for the following:

- a) Why the domestic product is not produced or manufactured in sufficient and reasonably available quantities of a satisfactory quality; and/or
- b) Why competitive bids reveal the cost of domestic product are significantly higher, Ten Percent (10%) or greater, than the nondomestic product.

B. School Food Authority Responsibilities

1. The SFA shall maintain documentation outlining the justification for supporting their use of an exception to the Buy American requirement **prior** to accepting nondomestic agricultural commodities or products. This documentation will be kept on file for the term of the contract plus any extensions and three additional school years thereafter. This will be made available during an onsite administrative review and an offsite procurement review.
2. The SFA shall monitor the contract to ensure that the correct domestic food components contracted for are delivered as required by 2 *CFR*, Section 200.318(b) unless the FSMC has received prior approval from the SFA for nondomestic agricultural commodity or product.
3. The SFA must ensure FSMC compliance with the Buy American Provision in accordance with their procurement procedures. These procedures, at a minimum, must include the requirement to include Buy American Provision language in solicitations and contracts as well as the process for requiring FSMCs to certify the domestic percentage of the agricultural food component of products.

V. U.S. Department of Agriculture Foods

A. Food Service Management Company Responsibilities

5. **(Note:** Replaces items 5 and 6) The FSMC must use all donated beef, pork, and all processed end products, in the recipient agency's food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the recipient agency's food service (unless the contract specifically stipulates that the donated food, and not such commercial substitutes, be used) (7 *CFR*, Section 250.51[d]).

B. School Food Authority Responsibilities

4. **(Note:** New clause) The SFA will not extend or renew any Contract if the FSMC did not fulfill all Contract provisions relating to donated foods (7 *CFR*, Section 250.53[a][12]).

Scope of Work

(**Note:** Small, Minority, Women Business and Buy American language was not previously included in the Scope of Work)

J. Contracting With Small, and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

The FSMC shall comply with 2 *CFR*, Section 200.321 (as applicable).

K. Buy American

The SFA participates in meal programs that require the use of nonprofit school food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A 'domestic commodity or product' is defined as one that is either produced in the U.S. or is processed in the U. S. substantially (51% or more by weight or volume) using agricultural commodities that are produced in the U. S. as provided in 7 *CFR* 210.21(d) and 220.16(d). The FSMC must:

1. **Submit certification statements for all processed agricultural products.** The Food Service Management Company (FSMC) must provide written documentation to the SFA at the time of delivery for each processed agricultural product certifying that the food product was processed 100 percent domestically and that the percentage of domestic content in the food component of the processed food product is over 51 percent, by weight or volume.

OR:

2. **Request SFA approval prior to delivering a nondomestic agricultural commodity or product.** If the FSMC cannot comply with #1 above, the FSMC must notify the SFA in writing 10 days prior to delivering a nondomestic agricultural commodity or product. This written notification must include the following:
 - a) Whether the request to deliver a nondomestic food is because the product is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality, or competitive bids reveal the costs of a domestic product are significantly higher than the nondomestic product.
 - b) The pricing of both domestic and nondomestic products and/or availability data to justify the use of one of the two allowable exceptions.
 - c) A list of alternative domestic substitutes for the SFA to consider for delivery instead of the nondomestic agricultural product.

C. Menus

Adhere to the 21-day cycle menu for the first 21 days of meal service; thereafter, the FSMC may only make changes with the SFA's approval (7 *CFR*, sections 210.10, 210.16[b][1] and 220.8, if applicable).

FOOD SERVICE MANAGEMENT COMPANYCONTRACTOR'S NAME *(If other than an individual, state whether a corporation, partnership, etc.)***Sodexo America, LLC**BY *(Authorized Signature)*DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

Leslie Milinkovic, Regional Vice President

ADDRESS

9801 Washington Blvd., Gaithersburg, MD 20878 Attn: Law Department**SCHOOL FOOD AUTHORITY**

SCHOOL FOOD AUTHORITY NAME

Gilroy Unified School DistrictBY *(Authorized Signature)*DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

Alvaro Meza, Assistant Superintendent Business Services

ADDRESS

7810 Arroyo Circle, Gilroy, California, 95020