

# MANAGEMENT DIRECTIVE

## Commonwealth of Pennsylvania Governor's Office

**Subject:**

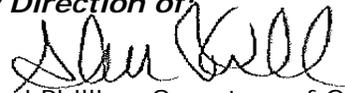
Contract Provision for Donation of  
Excess Prepared Food

**Number:**

215.13 Amended

**Date:**

October 12, 2011

**By Direction of:**

Sheri Phillips, Secretary of General Services

**Contact Agency:**

Department of General Services, Bureau of Procurement, Telephone 717.787.5862

This directive establishes policy, responsibilities, and procedures for ensuring contracts for the purchase of prepared food include a provision requiring contractors to donate excess prepared food to nonprofit organizations for distribution to the needy. This amendment adds an objective, definitions, and procedures; adds an enclosure for the standard provision for the donation of excess prepared food; and provides a link to the list of nonprofit organizations interested in receiving donations of excess prepared food. Marginal dots are excluded due to major changes.

1. **PURPOSE.** To establish policy, responsibilities, and procedures for ensuring contracts for the purchase of prepared food include a provision requiring contractors to donate excess prepared food to nonprofit organizations for distribution to the needy.
2. **SCOPE.** This directive applies to all departments, boards, commissions, and councils (hereinafter referred to as "agencies") under the governor's jurisdiction and independent agencies.
3. **OBJECTIVE.** To ensure contracts for the purchase of prepared food include a provision requiring contractors to donate excess prepared food to nonprofit organizations.
4. **DEFINITIONS.**
  - a. **Agency.** An executive or independent agency as defined by the *Commonwealth Procurement Code, 62 Pa.C.S. §103.*

- b. **Contract.** A legal binding agreement between a contractor and an agency for the procurement of supplies, services or construction.
- c. **Excess Prepared Food.** Any apparently wholesome food fit for human consumption which is not consumed at a commonwealth function and which remains at the function location at the conclusion of the function for disposal by the contractor. The term does not include food that commonwealth employees may take back to the office for other commonwealth employees to consume.
- d. **Food.** Food purchased with agency funds for consumption by commonwealth employees or invitees.
- e. **Waiver.** A written document justifying an exception to the policy requirement to include the standard provision for the donation of excess prepared food in contracts for the purchase of prepared food. The exception may include approved variations of the standard provision for the donation of excess prepared food or complete removal of the provision.

## 5. POLICY.

- a. Contracts for the purchase of prepared food must include the standard provision for the donation of excess prepared food or an approved waiver. Enclosure 1, Standard Provision for the Donation of Excess Prepared Food, is required unless the agency obtains an approved waiver.
- b. A waiver may be granted after written approval by the Secretary of General Services or designee.

## 6. RESPONSIBILITIES.

- a. **Agencies** shall include the standard provision for the donation of excess prepared food in contracts for the purchase of prepared food unless a waiver is granted.
- b. **Agency Chief Counsels** shall:
  - (1) Ensure that the standard provision for the donation of excess prepared food is included in all contracts for the purchase of prepared food unless a waiver is granted.
  - (2) Assist in the preparation of waivers, as needed.
- c. **Department of Agriculture** shall maintain a list of approved nonprofit organizations for the disposition of food suitable for human consumption. The list of Agencies in Pennsylvania Interested in Receiving Donations of Prepared Foods is available at [Donation of Excess Prepared Food](#).

## **7. PROCEDURES.**

### **a. Action By: Agency.**

- (1) Include the standard provision for the donation of excess prepared food in contracts for the purchase of prepared food, unless waived in accordance with this directive.
- (2) Seek advice of the agency chief counsel if the agency believes that a waiver is needed.
- (3) Submit the waiver request to the Secretary of General Services or designee.

### **b. Action By: Agency Chief Counsel.**

- (1) Ensure the standard provision for the donation of excess prepared food is included in contracts for the purchase of prepared food, or determine if a waiver is required in order to enter into such contract.
- (2) If a waiver is desired, assist in the preparation of the waiver request including justification.

### **c. Action By: Agency.** If a waiver is granted, includes the waiver in the contract file.

## **Enclosure 1 – Standard Provision for the Donation of Excess Prepared Food**

**This directive replaces, in its entirety, *Management Directive 215.13*, dated June 21, 1994.**

### **Standard Provision for the Donation of Excess Prepared Food**

The contractor agrees to make a good faith effort to donate to a nonprofit organization for ultimate free distribution to needy individuals any apparently wholesome food apparently fit for human consumption which is not consumed at the commonwealth function and remains at the function location at the conclusion of the function for disposal by the contractor. A good faith effort includes, at a minimum, contacting one or more of the entities appearing on the referral listing maintained by the Department of Agriculture. Pursuant to *42 Pa. C.S.A. §8338*, the contractor shall not be subject to liability arising from the nature, age, packaging or condition of the apparently wholesome food.