



Business Contracts: Ensuring Flexibilities During the Unexpected

Being nimble during an emergency is important for effectively responding to and managing unexpected situations. The ability to quickly adapt and execute actions can mitigate the impact of the crisis. Contract flexibility is essential in emergencies; it enables organizations to respond rapidly and modify terms, delivery schedules, pricing, and other operational details as the situation dictates.

Recently, the Administration for Community Living checked in with leaders in the aging network and asked them what they learned from previous emergencies and the contract flexibilities they've implemented. Overwhelmingly, all stressed the importance of establishing good relationships with suppliers that are partnership-based and collaborative. Effective communication, trust, and cooperation are essential to achieve common goals and drive success for both parties. Managing supplier relationships effectively can help mitigate the adverse effects of any emergency. Interviewees also mentioned the importance of maintaining program continuity during emergencies, which may require purchasing off-contract. Circumstances should be defined in advance for purchasing off-contract to preserve the integrity of the supplier relationship.

When asked about contract flexibilities, here's what our group said about what's needed to be better prepared now and in the future.

- **Price Management:** Contract terms should be defined to ensure pricing is accurately described, communicated, and adhered to throughout the duration of the agreement. Contracts should provide price adjustment mechanisms to account for fluctuations in pricing caused by inflation or supply chain disruptions. Consider the following contract terms and flexibilities to ensure a solid position to manage price.

- Negotiate a guaranteed fixed cost when possible. Leverage volume or usage, number of deliveries, and payment terms to secure the lowest possible price.
- Include an escalation clause to define the circumstances when suppliers can increase prices. When possible, include a price cap that limits or controls the allowable increase. Target a maximum price increase between 5%-10%, if possible. Factors impacting the cap include market conditions, production costs, and the interests of both parties.
- Include an indicator of inflation in contracts to evaluate whether a price increase is fair and warranted. Include an official government source or economic research institution that regularly releases updated [Consumer Price Index](#) (CPI) data and related reports for “away from home” food purchases, supplies, and services. The CPI can provide insights into trends, but it’s important to consider the broader economic context and specific facts affecting costs.
- **Supply Chain Disruptions:** Include contract flexibilities that allow sourcing ingredients locally, temporarily switching to different suppliers, or adjusting the menu based on available resources. Develop a written list of acceptable and appropriate substitutions. Product yield, taste, acceptability, allergens, and nutrition should also be part of the decision-making process for proper substitutions.
 - Allow for product changes or substitutions based on availability, storage limitations, and any dietary restrictions that might arise during supply chain disruptions.
- **Delivery and Service Modifications:** Consider flexibility around delivery methods and service locations. For instance, if your usual dining area becomes inaccessible, you might need to arrange food delivery to different locations, outside storage, or implement a grab-and-go service model.
- **Termination or Suspension Clauses:** Include provisions that allow for temporary suspension or termination of the contract if a disaster severely impacts the ability to provide or receive services. Define conditions under which this can occur, timelines, and any associated penalties or compensation. Timelines can include options at the 30, 60, and 90-day intervals.
- **Contract Length:** Reduce the length of contracts and opt for extensions to allow evaluation of the goods and services provided. Length flexibilities allow

for immediate responses to market changes and determining whether a longer-term commitment should exist.

- **Annual Performance Review:** Include the opportunity for performance reviews in contracts. The review will provide the platform to evaluate performance over the year and discuss positives and negatives, along with the opportunity to exercise flexibility if needed.
- **Force Majeure Clause:** This is a standard clause that outlines unforeseeable events (like natural disasters, fires, strikes, etc.) that could prevent one or both parties from fulfilling their obligations. It should detail how the contract will be affected in such cases, possibly allowing for temporary suspension or termination without penalties.

Additional contract flexibilities that might prove helpful include the following.

- **Health and Safety Protocols:** Food service providers must implement enhanced health and safety protocols to protect staff and customers. These changes often require additional expenses and adjustments to operations, which could affect the terms of existing contracts.
- **Insurance and Liability:** Clarify how insurance coverage and liability will be handled in case of damage to facilities, equipment, or other assets due to a disaster. Ensure both parties understand their responsibilities and potential financial implications.
- **Emergency Response Plan:** Incorporate a section detailing how the provider and your organization will respond in case of a disaster. This plan should include communications protocols, evacuation procedures, alternative supply chain strategies, notification timelines, and any changes in distribution and service.

Remember that the specifics of these flexibilities will depend on factors like the type of service, location, the potential disasters you're preparing for, and the legal and regulatory context of your area. It's highly recommended to consult with legal professionals experienced in contract law to draft a contract that accurately reflects your needs and complies with relevant laws and regulations.