UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service
Agricultural Marketing Service
Washington, D.C. 20013

GENERAL TERMS AND CONDITIONS

FOR THE PROCUREMENT OF AGRICULTURAL COMMODITIES OR SERVICES
(USDA-1 Revision 2)

Amendment No. 1 - October 1990

The Federal Acquisition Regulation (FAR) implementing the Drug-Free Workplace Act of 1988 was amended by Federal Acquisition Circular (FAC) 84-57. This amendment replaces Amendment 1 - March 1989 to reflect the changes contained in FAC 84-57. Amendment No. 1 is also issued pursuant to the Prompt Payment Act, as amended (31 U.S.C. 3901-3907).

1. Article 5 is amended as follows:

   "Article 5. DISCOUNTS FOR PAYMENT WITHIN A SPECIFIED TIME

   Any discounts offered for payment within a specified time will not be considered as a factor in evaluating offers. For any discount offered for payment within a specified time, time will be computed from the date of the invoice through the date the agency issues a check or otherwise delivers payment. Payments will be made and interest paid for late payments in accordance with Article 70."

2. Article 9 is amended as follows:

   "Section (h) is reserved."

3. Article 35 is added as follows:

   "Article 35. DRUG-FREE WORKPLACE

   (a) Definitions. As used in this clause, "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 C.F.R. 1308.11-1308.15.

   "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by

any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means a site(s) for the performance of work done by the contractor in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly Engaged" is defined to include all direct cost employees and any other contract employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds $25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will--no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision that, as a condition of continued employment on the contract resulting from this solicitation, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

(d) Failure of the offeror to provide the certification required by paragraphs (b) or (c) of this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104-1(g) and 19.602-1(a) (2) (i)).

(e) In addition to other remedies available to the Government, the certification in paragraphs (b) or (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001. Also, Contractor's failure to comply with the requirements of paragraphs (b) or (c) of this provision may, pursuant to 48 C.F.R. §23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment."

4. Article 70 is amended to read as follows:

"Article 70. INVOICES AND PAYMENT AND PAYMENT OF INTEREST

(a) Invoices for payment for the commodity, and for reimbursement of transportation and protective service charges, if any, must be submitted separately by the Contractor to the Fiscal Division, Kansas City Commodity Office. Invoices for payment for the commodity must be made on the invoice portion of the Notice to Deliver or on a commercial type invoice and be supported by the original (official) inspection and checkloading certificates, if applicable, and either a copy of commercial bill of lading signed by the carrier's agent or, in lieu thereof, a copy of a consignee's receipt evidencing delivery. Invoices for reimbursement of transportation and protective service charges, if any, must be supported by the original or a copy of carrier's receipted freight bill or invoice. If shipment is by contract carrier, the Contractor's invoice must also be supported by a copy of the contract between the Contractor and the truck or rail line showing the schedule of rates, or a copy of the truck or rail line's published rates.

(b) Invoices for payment of freight charges, billed by the transportation companies, must be submitted to the Traffic Management Division, Kansas City Commodity Office. Invoices must contain the applicable Notice to Deliver number to be considered a proper invoice.

(c) When the total quantity to be invoiced includes a fraction of a pound, the fraction should be omitted if less than one-half pound and raised to the next full pound if one-half pound or more. Only whole pounds should be shown on the invoice. Contractor may include more than one shipment on any invoice.

(d) It is mutually agreed and understood that in submitting an invoice, the Contractor thereby certifies that all requirements of the contract have been satisfied and the Contractor has complied fully with the representations, certifications, and warranties set forth in Part C of USDA-1. Submission of an invoice when all contract terms and conditions have not been satisfied may subject Contractor to civil and criminal penalties as provided in Titles 15, 18, and 31 of the United States Code. The Agency will make payment to the Contractor (or the assignee if an assignment is made pursuant to Article 69) of any amounts due with respect to each shipment invoiced.

(e) The payment is due after receipt by the Fiscal Division, Kansas City Commodity Office, of a properly prepared invoice with the required supporting documents as follows:

(1) Within 7 days on purchase contracts for the acquisition of meat, meat food products or edible fresh or frozen poultry meat, perishable poultry meat products, fresh eggs or perishable egg products.

(2) Within 10 days on purchase contracts for the acquisition of dairy products, fresh and frozen fruits and vegetables, edible fats or oils, and food products prepared from edible fats or oils.

(3) Within 30 days on all other contracts including processing contracts where Government-owned commodities are processed into end products.

(f) If payment is not made within the specified number of calendar days following receipt of a proper invoice, then interest will be paid on the unpaid amount. Interest will accrue beginning on the first day after the payment due date through the date the Agency issues a check or otherwise delivers payment. Interest will be added to the amount payable on the invoice.

(g) Interest will be paid at a rate of interest that is equal to the rate of interest established by the Secretary of the Treasury for payment of interest penalties under the Prompt Payment Act. Interest is computed using the rate in effect on the day the agency first accrues an obligation to pay interest. Interest in the amount less than $1.00 (one dollar) will not be paid.

(h) If a gross billing weight is shown in the offer and is to be considered in determining which offers are most advantageous to Agency, and if the gross billing weight as shown in the offer differs from that shown on the carrier's bill of lading, the Agency will require payment by Contractor for any excess transportation charges based upon the weight differences. Any savings will accrue to Agency."

5. Article 80 is added as follows:

"Article 80. DRUG-FREE WORKPLACE

The drug-free workplace provisions of Article 35 are hereby incorporated as post award provisions."

* U.S. G.P.O:1990-282-937:20813/SACS

UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service
Agricultural Marketing Service
Washington, D.C. - 20013

GENERAL TERMS AND CONDITIONS
FOR THE PROCUREMENT OF AGRICULTURAL COMMODITIES OR SERVICES
(USDA-1 Revision 2)

Amendment No. 2 - November 1990

The following amendments are made pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended, and are effective with respect to contracts awarded or modified on or after December 1, 1990.

This amendment replaces Amendment 2 to USDA-1 which was issued July 1989 and suspended during the period December 1, 1989, through November 30, 1990. This revised Amendment 2 reflects the changes required by the Act, as amended, and the Federal Acquisition Regulation (FAR) as amended by the Federal Acquisition Circular 84-60.

1. **Article 2 is amended as follows:**

   Paragraphs (q) through (u) are redesignated as paragraphs (r) through (v) and paragraph (q) is added as follows:

   "(q) "FAR" means Federal Acquisition Regulation which establishes a single regulation for use by all Executive Agencies in their acquisition of property or services. Copies of the FAR may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402." The FAR may be found at Title 48, Code of Federal Regulations.

2. **Article 36 is added as follows:**

   "Article 36. PROCUREMENT INTEGRITY
   (Applicable to contracts and contract modifications in excess of $100,000.)

   (a) PROHIBITED CONDUCT BY COMPETING CONTRACTOR. - During the conduct of any Federal agency procurement of property or services, no competing Contractor or any officer, employee, representative, agent, or consultant of any competing Contractor shall knowingly-

   (1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency, except as provided in 48 C.F.R. § 3.104-6(b);

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of such agency; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of such agency, prior to the award of a contract any proprietary or source selection information regarding such procurement.

(b) PROHIBITED CONDUCT BY PROCUREMENT OFFICIALS. During the conduct of any Federal agency procurement of property or services, no procurement official of such agency shall knowingly-

(1) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing Contractor, except as provided in 48 C.F.R. § 3.104-6(a);

(2) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing Contractor for such procurement; or

(3) Disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the Contracting Officer to receive such information.

(c) DISCLOSURE TO UNAUTHORIZED PERSONS. - During the conduct of any Federal agency procurement of property or services, no person who is given authorized or unauthorized access to proprietary or source selection information regarding such procurement, shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized by the head of such agency or the Contracting Officer to receive such information.

(d) RESTRICTIONS RESULTING FROM PROCUREMENT ACTIVITIES OF GOVERNMENT OFFICERS OR EMPLOYEES WHO ARE OR WERE PROCUREMENT OFFICIALS.

(1) No individual who, while serving as an officer or employee of the Government or member of the Armed Forces, was a procurement official with respect to a particular procurement may knowingly-

(i) Participate in any manner, as an officer, employee, agent, or representative of a competing Contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement, or

(ii) Participate personally and substantially on behalf of the competing Contractor in the performance of such contract.

The restrictions in (d)(1)(i) and (d)(1)(ii) of this Article apply during the period ending 2 years after the last date such individual participated personally and substantially in the conduct of such procurement or personally reviewed and approved the award, modification, or extension of any contract for such procurement.

(2) This subsection does not apply to any participation referred to in subdivisions (d)(1)(i) and (d)(1)(ii) of this Article with respect to a subcontractor who is a competing Contractor unless--

(i) The subcontractor is a first or second tier subcontractor and the subcontract is for an amount that is in excess or $100,000; or

(ii) The subcontractor significantly assisted the prime Contractor with respect to negotiation of the prime contract; or

(iii) The procurement official involved in the award, modification, or extension of the prime contract personally directed or recommended the particular subcontractor to the prime Contractor as a source for the subcontract; or

(iv) The procurement official personally reviewed and approved the award, modification, or extension of the subcontract."

3. **Article 37 is added as follows:**

"Article 37. REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY
(Applicable to contracts and contract modifications in excess of $100,000.)

(a) Definitions. The Definitions at 48 C.F.R. § 3.104-4 are incorporated in this Article.

(b) As required by paragraph (c) of this Article, the officers or employees responsible for submitting bids shall execute the following certification:

Certificate of Procurement Integrity

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended, (41 U.S.C. 423) (hereinafter referred to as "the Act"), as implemented in the Federal Acquisition Regulation (FAR) and USDA-1, occurring during the conduct of procurements under Announcement Number _____.

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of Offeror] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR and USDA-1, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR and USDA-1, pertaining to procurements under Announcement Number _____.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER "NONE" IF NONE EXISTS)
_____.

(4) I agree that, if awarded a contract under Announcement Number _____, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this Article.

(Signature)_____(date)_____
[Typed Name of above Officer or
Employee Responsible for the Offer]

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER THE UNITED STATES CODE (U.S.C.), INCLUDING TITLE 18, U.S.C., SECTION 1001 AND TITLE 15 U.S.C., SECTION 714m.

(c) The signed certification must be received by the Contracting Officer prior to the Offeror submitting an offer. Failure of an Offeror to submit the signed certificate prior to bid opening or with its offer will render the offer nonresponsive. The Offeror must reaffirm this certification in each bid submitted. Any violation or possible violations discovered or occurring after the Offeror submits the certificate must be reported on a revised certificate.

(d) The Offeror may be requested to execute additional certifications at the request of the Government. Failure of an Offeror to submit the additional certifications shall cause its offer to be rejected.

(e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award. However, the Government, after evaluation of the disclosure, may cancel the procurement or take any other appropriate actions in the interests of the Government, such as disqualification of the Offeror.

(f) In making the certification in subparagraph (b)(2) of the certificate, the officer or employee of the competing Contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be maintained by the Contractor for 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(g) Certifications under paragraphs (b) and (d) of this Article are material representations of fact upon which reliance will be placed in awarding a contract."

4. **Article 38 is reserved.**

5. **Article 81 is added as follows:**

"Article 81. REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY-MODIFICATION
(Applicable to contract modifications in excess of $100,000.)

(a) Definitions. The definitions set forth in 48 C.F.R. § 3.104-4 are hereby incorporated in this Article.

(b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this Article when requested by the Contracting Officer in connection with the execution of any modification of a contract.

(c) Certification. As required in paragraph (b) of this Article, the officer or employee responsible for the modification proposal shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY MODIFICATION

(1) I, [Name of certifier] am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR and USDA-1, occurring during the conduct of contract number _____ and modification number_____.

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of Offeror] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR and USDA-1, and will report immediately to me any information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Act, as implemented in the FAR and USDA-1, pertaining to this procurement.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity-Modification (Continuation Sheet), ENTER "NONE" IF NONE EXISTS)_____

_____

(Signature) (date)
[Typed name of the officer or employee responsible for the modification proposal]

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER THE UNITED STATES CODE (U.S.C.), INCLUDING TITLE 18 U.S.C., SECTION 1001 AND TITLE 15 U.S.C., SECTION 714m.

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(e) The certification required by paragraph (c) of this Article is a material representation of fact upon which reliance will be placed in executing this modification."

6. **Article 82 is added as follows:**

"Article 82. PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY

(a) The Government, at its election, may reduce the price of a fixed-price type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this Article if the head of the contracting activity or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR and USDA-1.

(b) The price or fee reduction referred to in paragraph (a) of this Article for firm-fixed price contracts or contract modifications will be 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this Article for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this Article, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract."

7. **Article 97 is added as follows:**

"Article 97. PROCUREMENT INTEGRITY-SERVICE CONTRACTING (Applicable to contracts and contract modifications in excess of $100,000.)

(a) Definitions. The definitions in 48 C.F.R. § 3.104-4 are hereby incorporated in this Article.

(b) The Contractor shall establish a procurement ethics training program for its employees serving as procurement officials. The program shall, at a minimum-

(1) Provide for the distribution of written explanations of the provisions of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR and USDA-1, to such employees; and

(2) Require each such employee, as a condition of serving as a procurement official, to certify to the Contracting Officer that he or she is familiar with the provisions of the Act, as implemented in the FAR and USDA-1, and will not engage in any conduct prohibited by subsection 27(a), (b), (d), or (f) of the Act, as implemented in the FAR and USDA-1, and will report immediately to the Contracting Officer any information concerning a violation or possible violation of the prohibitions.

(c) Pursuant to 48 C.F.R. § 3.104-9(d), a Contractor employee who is serving as a procurement official may be requested to execute additional certifications.

(d) If a Contractor employee serving as a procurement official ceases performance of these duties during the conduct of such procurement expected to result in a contract or contract modification in excess of $100,000, such employee shall certify to the Contracting Officer that he or she understands the continuing obligation, during the conduct of the agency procurement, not to disclose proprietary or source selection information related to such agency procurement."

☆ U.S. Government Printing Office : 1990 - 282-968/21022

UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service
Agricultural Marketing Service
Washington, D.C. 20013

GENERAL TERMS AND CONDITIONS
FOR THE PROCUREMENT OF AGRICULTURAL COMMODITIES OR SERVICES
(USDA-1 Revision 2)

Amendment No. 3 - August 1989

The following amendment is made pursuant to the Business Opportunity Development Reform Act (PL-100-656) and is effective with respect to contracts awarded on or after August 15, 1989.

1. Article 80 is added as follows:

"Article 80. LIQUIDATED DAMAGES - SMALL BUSINESS SUBCONTRACTING PLAN

(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this Article, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under Article 28 of USDA-1 entitled "Small Business and Small Disadvantaged Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this Article that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with Article 28 of USDA-1 entitled "Small Business and Small Disadvantaged Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this Article.

(d) With respect to commercial products plans, i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of Article 28 of USDA-1 entitled, "Small Business and Small Disadvantaged Business Subcontracting Plan," the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this Article on behalf of all agencies that awarded contracts covered by that commercial products plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have."

UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service
Agricultural Marketing Service
Washington, D.C. 20013

GENERAL TERMS AND CONDITIONS
FOR THE PROCUREMENT OF AGRICULTURAL COMMODITIES OR SERVICES
(USDA-1 Revision 2)

Amendment No. 4 - March 1990

The following amendment is made pursuant to the Interior and Related Agencies Appropriations Act (P.L.-101-121) and is effective with respect to contracts awarded on or after January 30, 1990.

1. Article 39 is added as follows:

"Article 39. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(a) The definitions and prohibitions contained in Article 39A and in the Federal Acquisition Regulation, at 48 C.F.R. 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of Article 39.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure."

2. Article 39A is added as follows:

"Article 39A. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(a) Definitions.

"Agency," as used in this article, means executive agency as defined in 48 C.F.R. 2.101.

"Covered Federal action," as used in this article, means any of the following Federal actions:

(a) The awarding of any Federal contract.
(b) The making of any Federal grant.
(c) The making of any Federal loan.
(d) The entering into of any cooperative agreement.
(e) The extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this article, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this article, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this article, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this article, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(c) A special Government employee, as defined in section 202, title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this article, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this article, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this article, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this article, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this article, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this article, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee

of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees. (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this article, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this article, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this article are permitted under this article.

(ii) Professional and technical services. (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this article, does not apply in the case of --

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or

pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this article, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable.

Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this article are permitted under this article.

(E) The reporting requirements of 48 C.F.R. 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) Disclosure. (A) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this article, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this article. An event that materially affects the accuracy of the information reported includes--

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding $100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is

submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(iv) Agreement. The Contractor agrees not to make any payment prohibited by this article.

(v) Penalties. (A) Any person who makes an expenditure prohibited under paragraph (a) of this article or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this article shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(vi) Cost allowability. Nothing in this article makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this article will not be made allowable under any other provision.

☆U.S. Government Printing Office : 1990 - 261-465/20299