

**INTERAGENCY AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE
AND
THE SMALL BUSINESS ADMINISTRATION**

THIS AGREEMENT entered into this 30th day of September, 1997, between the U.S. Department of Agriculture, Agricultural Marketing Service, (hereinafter referred to as USDA/AMS) and the Small Business Administration (hereinafter referred to as SBA).

WITNESSETH THAT:

WHEREAS, USDA/AMS and SBA intend to enter into contracts with each other; and

WHEREAS, USDA/AMS, in order to achieve contractual expediency, utilizes telegraphic awards in lieu of standard contractual forms; and

WHEREAS, SBA is required by its Standard Operation Procedure, 80-05-02 dated October 29, 1990, to include specific provisions in 8(a) Prime Contracts and Subcontracts; (Attachment No. 1, hereto); and

WHEREAS, USDA/AMS SPECIAL PROVISIONS FOR 8(a) PROCUREMENTS, also required in such contracts are attached hereto and made a part of this agreement (Attachment No. 2); and

WHEREAS, this Interagency Agreement and Attachments No. 1, 2 and 3 are to be cited by reference in contracts between USDA/AMS and SBA, and shall be referred to as AMS Agreement 98-1, dated September 30, 1997; and

WHEREAS, in reference to the term contractor, it is understood that this is the SBA 8(a) contractor.

Now, **THEREFORE**, the parties hereto do mutually agree as follows:

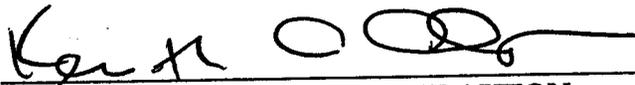
CLAUSE 1. SBA shall incorporate this agreement by reference in the telegraphic bids to USDA/AMS.

CLAUSE 2. Notwithstanding Federal Procurement Procedures relative to the 8(a) Program, USDA/AMS will make telegraphic awards to SBA in the form and format prescribed by USDA/AMS.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first herein written. This agreement supersedes all prior agreements concerning this subject matter and will remain in effect until terminated. Either AMS or SBA can terminate this agreement upon 15 days written notice to the other. This agreement may be modified by a written document signed by both AMS and SBA.

**FOR THE UNITED STATES OF AMERICA:
THE U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE**

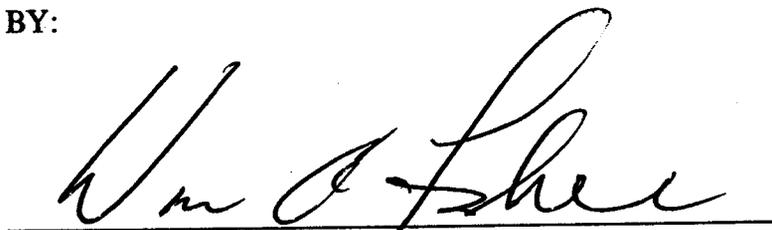
BY:



**KENNETH C. CLAYTON
ASSOCIATE ADMINISTRATOR**

THE SMALL BUSINESS ADMINISTRATION

BY:



**WILLIAM A. FISHER
ACTING ASSOCIATE ADMINISTRATOR
FOR MINORITY ENTERPRISE DEVELOPMENT**

SPECIAL CLAUSES FOR 8(a) PRIME CONTRACTORS

[These clauses are included by reference in all contracts between SBA and USDA/AMS, entered into pursuant to this Interagency Agreement.]

Special 8(a) Contract Conditions

Reference FAR 52.219-11

SPECIAL 8(a) CONTRACT CONDITIONS (FEB 1990)

The Small Business Administration (SBA) agrees to the following:

- (a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).
- (b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.
- (c) Except for novation agreements and advance payments, delegates to the **USDA/AMS** the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract: provided, however, that the **USDA/AMS** shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.
- (d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the **USDA/AMS**.
- (e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the "Disputes" clause of said subcontract.
- (f) To notify the **USDA/AMS** Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

SPECIAL CLAUSES FOR 8(a) SUBCONTRACTS

[SBA agrees to include these clauses in any 8(a) subcontract between SBA and an 8(a) Program Participant, entered into pursuant to this Interagency Agreement.]

Special 8(a) Subcontract Conditions

Reference FAR 52.219-12

SPECIAL 8(a) SUBCONTRACT CONDITIONS (FEB 1990)

- (a) The Small Business Administration (SBA) has entered into Contract No. [insert number of prime contract] with the USDA/AMS to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.
- (b) The [insert name of subcontractor], hereafter referred to as the subcontractor, agrees and acknowledges as follows:
 - (1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. (insert number of prime contractor) for the consideration stated therein and that it has read and is familiar with each and every part of the contract.
 - (2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the USDA/AMS with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.
 - (3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without prior written approval of the SBA and the designated Contracting Officer of the USDA/AMS.
 - (4) That it will notify the USDA/AMS Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the USDA/AMS.

**U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE**

SPECIAL PROVISIONS FOR 8(a) PROCUREMENTS

1. In the event of non-performance of a contract by a Contractor, it is agreed that no further contracts will be offered by SBA to that Contractor(s) during the current fiscal year or until claims for damages resulting from non-performance are settled.
2. It is expressly understood that the attached standard terms and the conditions and clauses contained in the Announcements and Invitations, Specifications, and USDA-1, Revision No. 2, "General Terms and Conditions for the Procurement of Agricultural Commodities or Services," dated November 1984, as amended, apply only to the Contractor.
3. It is understood that in no event shall SBA be liable for liquidated damages or costs caused by non-performance by the Contractor.
4. Maximum prices for non-competitive contracts paid by USDA/AMS shall be determined as follows:

RED MEAT AND FISH PRODUCTS - Under origin purchases, the parties expressly agree that when transportation considerations are not a factor, SBA shall be offered a price equal to the highest bid price to be awarded during each bid week for each respective commodity. If, in the final stages of a procurement phase or program it becomes necessary to consider freight costs in making awards (because of an imbalance between production areas and regional distribution needs), the price(s) offered SBA will be the maximum USDA can pay to an 8(a) firm in a given location after evaluation of transportation charges to any deficient distribution area. On destination purchases where multiple requirements per destination exist, the parties expressly agree that the 8(a) firm shall be offered a price equal to the highest bid price awarded or to be awarded at specified destinations in States determined by the Contracting Officer based on the location of the participating firm and the quantities required at specific destinations for each invitation.

POULTRY AND POULTRY PRODUCTS - Under origin purchases, the parties expressly agree that when transportation considerations are not a factor, SBA shall be offered a price equal to the highest bid price to be awarded during each bid week for each respective commodity. If, in the final stages of a procurement phase or program, it becomes necessary to consider freight costs in making awards (because of an imbalance between production areas and regional distribution needs), the price(s) offered SBA will be the maximum USDA can pay to an 8(a) firm in a given location

after evaluation of transportation charges to any deficient distribution area. On destination purchases where multiple requirements per destination exist, the parties expressly agree that the 8(a) firm shall be offered a price equal to the highest bid price awarded or to be awarded at specified destinations in States selected in advance for each invitation. The selected States will be determined by the Contracting Officer based on the location of the participating firm and the quantities required at specific destinations for each invitation.

CANNED AND FROZEN FRUITS, VEGETABLES AND JUICES - The parties expressly agree that the SBA Contractor(s) shall be offered the highest bid price awarded under the particular Announcement/Invitation within the same production area after evaluating transportation charges to destinations where product is needed under origin purchases and the highest price paid to other bidders at specific points under destination purchases.

5. USDA/AMS will determine maximum prices to be paid for competitive canned and frozen fruits, vegetables, and juices contracts as follows:

For contracts, including options, expected to exceed \$5 million and when there is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price, offers may be solicited on a competitive bid basis among eligible 8(a) firms. The AMS contracting officer will use cost or price analysis and consider commercial prices for similar products, available in-house cost estimates, and recent award prices for similar items purchased by AMS when there is comparability in quantities, conditions, and terms.

6. Offering procedures under non-competitive are as follows: Once the potential top award prices are established, these figures shall be telephoned by the appropriate Agricultural Marketing Service Contracting Officer or representative thereof to the appropriate SBA District Office. An SBA District Office contact and a backup must be named before the buying begins. Those individuals named as liaisons must be familiar with the terms and conditions of this Agreement. SBA's District Office(s) will then contact the participating 8(a) firm(s) for negotiation of an award. The SBA District Office(s) shall notify the applicable AMS Contracting Office via telecopier (FAX) of a decision to accept or not accept a contract within 24 hours after being advised of the appropriate contract price. A decision to accept a contract shall be set forth in the offer format prescribed by the applicable announcement and this Agreement. A copy of the SBA District Office(s) acceptance or nonacceptance shall also be transmitted via telecopier (FAX) to SBA, Washington, DC.

In the event that there are more than two SBA Districts involved with the same commodity, the AMS Contracting Officer shall have the option of contacting SBA, Washington, DC, and informing a predetermined contact of the top awarded price for each offering. The staff contact, in turn will notify the District Offices of the price and the procedures will then remain the same as above.

No changes in SBA contact points will be implemented by AMS without informing USDA's Office of Small and Disadvantaged Business Utilization (OSDBU). OSDBU will assist both AMS Contracting Officers and SBA contacts at the start of each buying season and when any changes need to be made. OSDBU will assure that contacts are in place and they will be available to provide any additional coordination assistance required.

7. Offerings made available to the SBA will be as follows:

RED MEAT ITEMS AND FISH PRODUCTS - POULTRY AND POULTRY PRODUCTS - CANNED AND FROZEN FRUITS, VEGETABLES, AND JUICES-

Two units (a unit equals the minimum quantity to be bid per Announcement/Invitation or Invitation as applicable) shall be offered to firms newly entering any of these programs. A single unit may be offered if requested by the firm. Depending on program needs, once a satisfactory performance record is established, offerings per firm may gradually be increased to a mutually agreeable number of units. A decision to offer more than two units under any of the programs to any one firm will be made by the applicable AMS division, based on total quantities needed, transportation consideration, and the successful performance by the firm on previous contracts.

8. Awards made under this agreement will be incorporated into the regular press release(s) or purchase announcement(s) and will indicate the name of the Contractor. For ongoing weekly or biweekly purchase programs, notice of 8(a) awards may be included in the announcement for the week the award is negotiated or the subsequent purchase announcement.
9. In light of the purpose for which an award is authorized, i.e., to assist the Contractor toward achievement of viability, the Contractor will agree not to further subcontract any of the performance of the contract without prior written approval of both the SBA and AMS Contracting Officers.
10. AMS awards commodity contracts for manufacturing standard industrial codes only.
11. It is understood that this agreement may be amended at any time to remedy any unforeseen procedural difficulties.

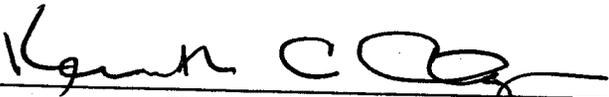
ATTACHMENT 3

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SBA AND THE U.S.
DEPARTMENT OF AGRICULTURE, AGRICULTURAL MARKETING SERVICE**

Under 48 C.F.R. § 19.805-1(d), the SBA Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD) may approve an agency recommendation for competitive 8(a) awards below the prescribed competitive thresholds. SBA will consider AMS' requests on individual invitations to lower the competitive threshold to \$1,500,000 for products identified in the SIC code classifications listed in 48 C.F.R. § 19.102 for Division D-Manufacturing, Major Group 20 -Food and Kindred Products.

AMS will submit requests to AA/MSB&COD electronically in a mutually acceptable format. SBA will consider and respond to the requests on an expedited basis, normally within 1 work day. AMS will provide copies of threshold waivers to the applicable SBA district office(s).

When granted, the \$1.5 million threshold waiver will supersede the threshold outlined in the Agreement in Attachment 2, page 2, item 5. In any case, the total value of 8(a) awards made under such waiver authority will not exceed 25 percent of all 8(a) awards made by AMS through the AMS/SBA interagency agreement each fiscal year.



KENNETH C. CLAYTON
ASSOCIATE ADMINISTRATOR



WILLIAM A. FISHER
ACTING ASSOCIATE ADMINISTRATOR
FOR MINORITY ENTERPRISE DEVELOPMENT