Fruit and Vegetable Programs

January 2004

APPENDIX 1

ANNUAL CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES

FOR PURCHASE OF FRUIT AND VEGETABLE PRODUCTS

(THESE CERTIFICATIONS CONCERN MATTERS WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTICIOUS, OR FRAUDULENT CERTFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER THE UNITED STATES CODE, INCLUDING TITLE 18, U.S.C. SECTION 1001)

This Appendix is incorporated by reference to all USDA/AMS Fruit & Vegetable Programs Announcements (Announcement) and must be submitted to the Contracting Officer so that the determination of responsibility can be made with respect to offers submitted in response to Invitations issued under the Announcement. The Fruit & Vegetable Programs of Agricultural Marketing Service (F &V-AMS) will retain on file this appendix as the offeror's certifications, representations, and warranties for subsequent Invitations for offers under the Announcement. By signing an offer under the Announcement, the offeror certifies and warrants that the Appendix on file with F&V-AMS is current. Offerors are responsible for updating this Appendix as may be necessary prior to submission, or with any applicable offer submitted.

A false certification may result in rejection of an offer, suspension or debarment, termination of the contract, liability for damages under the provisions under USDA-1, or criminal prosecution.

1. Notice of Requirements for Certification of Non-Segregated Facilities

By signing an offer under this Announcement, the offeror will have been deemed to have signed and agreed to the provisions of the "Certification of Non-Segregated Facilities" of Article 31 of USDA-1.

2. Responsibility of Offeror

A. Offeror certifies that the producing plant(s) specified in the offer is a facility operating under the provisions of the Agricultural Marketing Act of 1946.

B. The offeror agrees to include the certification in Paragraph A above in all applicable subcontracts.

3. Buy American Certification

By submitting an offer, the offeror certifies that end products to be furnished will be of domestic origin as defined in section I.F. of the Announcement. This provision is a deviation from 48 C.F.R. Part 25.

4. Domestic Products Certification

A. Responsibility

1. The offeror agrees to deliver only end products originating from U.S.-produced crops grown and processed and packaged solely in the United States as defined in section I. F. of the Announcement.

2. The offeror agrees to obtain approval of its domestic origin program prior to performance on USDA contracts for compliance with the domestic product requirements as defined in section I.F. of the Announcement.

3. The offeror agrees to include section I.F. "Domestic Products" in its entirety in all subcontracts for agricultural supplies used in fulfilling any contracts awarded under the Announcement.

4. The offeror agrees to maintain records including, but not limited to, invoices, production, and inventory records evidencing product origin; and to make such records available for review by the Government in accordance with Article 76 of USDA-1.

B. In making each shipment under the contract, the Contractor is certifying that all products delivered to USDA under the contract are domestic as defined in section I. F of the Announcement.

5. Notice of Total Small Business Set-Aside (Applicable if procurement is a Total Small Business Set-Aside)

A. Definition

"Small business concern" as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation, in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in Title 13, C.F.R. Part 121, Subpart A, Section 601. For the fruit and vegetable industry, a business with less than 500 employees is classified as a small business under the Small Business Act, 15 U.S.C. 631 *et seq.*

B. General

(1) Offers are solicited from small business concerns. Offers received from concerns that do not qualify as small business concerns will be considered nonresponsive and will be rejected. However, before rejecting an offer otherwise eligible for award, because of questions concerning the size representation, an SBA determination must first be obtained.

(2) Any award resulting from this solicitation will be made to a small business concern.

C. Agreement

A manufacturer or regular dealer submitting an offer in its own name warrants delivery of only small business set-aside end items manufactured or produced by small business concerns inside the United States, its territories or possessions, Puerto Rico, or the Trust Territories of the Pacific Islands.

6. **Small Business Concern Representation** (Circle One)

Offeror represents and certifies as part of its offer that it **(IS)** a small business concern, **(IS NOT)** a small business concern as defined in paragraph 5. A of this Appendix.

7. **Small Disadvantaged Business Concern Representation** (Circle One at A and B)

A. Offeror **(IS) (IS NOT)** a small disadvantaged business concern as defined in the "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" clause of Article 45 of USDA-1;
and

B. Offeror **(IS) (IS NOT)** certified as a small disadvantaged business by the Small Business Administration (SBA).

8. **Women-Owned Small Business Representation** (Circle One)

Offeror **(IS) (IS NOT)** a women-owned small business concern as defined in the "Utilization of Women-Owned Businesses" clause of Article 42 of USDA-1.

9. **Veteran-Owned Small Business Representation** (Circle One)

A. Offeror **(IS) (IS NOT)** a Veteran Owned small business concern as defined by 48 CFR Part 2.

B. Offeror **(IS) (IS NOT)** a Service Diabled Veteran-Owned small business concern as defined by 48 CFR Part 2.

B.

10. **Cooperative Business Representation** (Circle One)

Offeror **(IS) (IS NOT)** incorporated as a cooperative in accordance with its States Regulations.

11. Hub Zone Representation (Circle One)

Offeror **(IS) (IS NOT)** certified as a Hub Zone by the U.S. Department of Commerce.

12. Contingent Fee Representation (Circle Option at A and B)

The offeror represents that, except for the full-time bona fide employees working solely for the offeror, the offeror:

A. **(HAS) (HAS NOT)** employed or retained any person or company to solicit or obtain this contract;
and

B. **(HAS) (HAS NOT)** paid or agreed to pay to any person or entity employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

13. Clean Air and Water Certification (Circle Option at A)

Offeror certifies as follows:

A. Any facility in performance of this proposed contract (IS) (IS NOT) listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
and

B. The offeror WILL immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility which it proposes to use for the performance of contract is under consideration to be listed on the EPA List of Violating Facilities;
and

C. The offeror WILL include a certification substantially the same as this certification, including this paragraph C, in every non-exempt subcontract. (Article 47 of USDA-1 contains the Clean Air and Water clauses)

14. Affirmative Action Compliance (Circle Options at A and B)

Offeror represents that it:

A. **(HAS) (HAS NOT)** developed and **(HAS) (DOES NOT HAVE)** on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 C.F.R. Subparts 60-1 and 60-2);
and

B. **(HAS) (HAS NOT)** previously had contracts subject to the written affirmative action program requirement of the rules and regulations of the Secretary of Labor.

15. Additional Certifications

1. Manufacturer (Check One)

Offeror represents and certifies that it [ ] is, [ ] is not a manufacturer.

Manufacturer means a person that owns, operates, or maintains a factory or establishment that produces on the premises the material, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. Nonmanufacturer (Check One)

Offeror represents and certifies it [ ] is, [ ] is not a manufacturer.

Nonmanufacturer means a person that is primarily engaged in the wholesale or retail trade and normally sell the items being supplied to the general public; and will supply the end item of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement pursuant to 13 C.F.R. 121.406.

16. Previous Contracts and Compliance Reports (Circle Option at A and B)

Offeror represents that it:

A. **(HAS) (HAS NOT)** participated in a previous contract or subcontract subject either to the "Equal Opportunity" clause in article 41 of USDA-1, the clause originally contained in section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;
and

B. **(HAS) (HAS NOT)** filed all required compliance reports;
and

C. WILL obtain representations indicating submission of required compliance reports signed by proposed subcontractors prior to subcontract awards.

17. Certificate of Independent Price Determination (Check A or B and Insert Name of Principal)

A. _____ Offeror certifies that the person submitting bids under this Announcement, as identified in Section 17, is the person in the offeror's organization responsible for determining the prices being offered in bids and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of the "Certificate of Independent Price Determination" clause of article 30 of USDA-1;
or

B. _____ Offeror certifies that the person submitting bids under the Announcement, as identified in Section 17, is an authorized agent for (Name of Principal), and does certify that the Principal named above has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3), of the "Certificate of Independent Price Determination" clause of article 30 of USDA-1, and that he or she as agent, has not personally participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of the "Certificate of Independent Price Determination" clause of article 30 of USDA-1.

18. Certificate Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters (Circle Option at (1) (a), (b), and (c) and (2))

A. The offeror certifies, to the best of his or her knowledge and belief, that:

(1) The offeror or any of its principals:

(a) **(ARE) (ARE NOT)** presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
and

(b) **(HAVE) (HAVE NOT)**, within a 3-year period preceding this offer been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) contract or subcontract; violation of Federal or State anti-trust statutes relating to the submission of offers; or commission of embezzlement, theft, statements, or receiving stolen property;
and

(c) **(ARE) (ARE NOT)** presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission or any of the offenses enumerated in subdivision A (1)(b) of this provision;
and

(2) The offeror **(HAS) (HAS NOT)**, within a 3-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

B. "Principals," for the purpose of this certification means officers, directors, owners, partners, and/or persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

C. The offeror must provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

D. A certification where any items in paragraph A of this provision affirmatively exist shall not necessarily result in withholding of an award under the solicitation. However, certification shall be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the offeror nonresponsible.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph A of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

F. The certification in paragraph A of this provision is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the offeror knowingly rendered an erroneous certification then, in addition to other remedies available to the Government, the Contracting Officer may terminate for default the contract resulting from this solicitation.

19. **The certifications, warranties, and representations as set forth in this Appendix and part C and D of USDA-1, are hereby made.**

IN THE WITNESS WHEREOF, the undersigned has executed this Appendix this _____ day of _____, _____

NAME OF FIRM: _____

SIGNATURE:* _____ TITLE: _____

_____
(Typed Name of the Officer or Employee Responsible for Offers)

TYPE OF FIRM: _____
(Corporation, Partnership, Individual Proprietorship)

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE NO: _____ FAX NO: _____

TAX IDENTIFICATION NO. (TIN): _____

Additional Representatives Authorized to Execute Contracts	
Signature	Typed Name

ADDRESS

CITY STATE ZIP CODE

TELEPHONE NO. FAX NO.

EMAIL ADRESS

* **Before signing this Appendix, See Article 6 of USDA-1, Signing of Offers**