

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."