

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 of \$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."

