

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."