

# Rural Development – Supplemental Federal Conditions

These supplemental Federal Conditions are for use with a manufacturer, supplier or vendor purchase agreement, sales agreement, invoice or contract. The purchase agreement, sales agreement, invoice or contract is hereinafter called “Contract”. This supplement is only valid for equipment purchases, material purchases and associated minor labor. It is not for use on construction projects. Equipment purchase, software purchase/license, material purchase and associated minor labor, or combination thereof, are hereinafter called “Project”. Rural Development must review the Contract and determine it is adequate. By signing these supplemental Federal Conditions all parties agree to these conditions and that any of the conditions of this supplement that conflict with the contract are superseded by the conditions of this Federal supplement. The manufacturer, vendor or supplier is hereinafter called “Supplier”. The City, Non-profit organization, owner or applicant is hereinafter called “Owner”.

## *1 Conflicts between Documents*

1.1 Where conflicts exist between these federal supplemental provisions and the Suppliers Contract the provisions of the supplemental federal conditions supersede the conditions of the Suppliers Contract.

## *2 Agency Not a Party*

2.1 This Contract is expected to be funded in part with funds provided by Agency. Neither Agency, nor any of its departments, entities, or employees is a party to this Contract.

## *3 Contract Approval and Change Orders*

3.1 Concurrence by Agency in the award of the Contract is required before the Contract is effective.

3.2 Agency approval is required before change orders are effective. All changes in contract amount or delivery time must be accomplished by change order.

## *4 Conflict of Interest*

4.1 Supplier may not knowingly contract with another supplier or manufacturer if the individual or entity who prepared the solicitation has a corporate or financial affiliation with the supplier or manufacturer.

4.2 Owner’s officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of

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the above, has a financial interest in Supplier. Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Supplier.

### *5 Gratuities*

5.1 If Owner finds after a notice and hearing that Supplier, or any of Supplier's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Supplier, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.

5.2 In the event this Contract is terminated as provided herein, Owner may pursue the same remedies against Supplier as it could pursue in the event of a breach of this Contract by Supplier. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Supplier incurs in providing any such gratuities to any such officer or employee.

### *6 Audit and Access to Records*

6.1 For all negotiated contracts and negotiated modifications (except those of \$10,000 or less), Owner, Agency, the Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Supplier, which are pertinent to the Contract, for the purpose of making audits, examinations, excerpts and transcriptions. Supplier shall maintain all required records for three years after final payment is made and all other pending matters are closed.

### *7 Small, Minority and Women's Businesses*

7.1 If Supplier intends to let any subcontracts for a portion of the Project, Supplier shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall consist of: (1) including qualified small, minority and women's businesses on solicitation lists; (2) assuring that small, minority and women's businesses are solicited whenever they are potential sources; (3) dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses; (4) establishing delivery schedules, where the requirements of the Project permit, which will encourage participation by small, minority and women's businesses; (5) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; (6) requiring each party to a subcontract to take the affirmative steps of this section; and (7) Contractor is encouraged to procure goods and services from labor surplus area firms.

*8 Anti-Kickback*

8.1 Supplier shall comply with the Copeland Anti-Kickback Act (18 USC 874 and 40 USC 276c) as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States”). The Act provides that Supplier shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. Owner shall report all suspected or reported violations to Agency.

*9 Clean Air and Pollution Control Acts*

9.1 If this Contract exceeds \$100,000, Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h) and 42 USC 7401et. seq.), section 508 of the Clean Water Act (33 U.S.C. 1368) and Federal Water Pollution Control Act (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) is required. Supplier will report violations to the Agency and the Regional Office of the EPA.

*10 State Energy Policy*

10.1 Supplier shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in any applicable State Energy Conservation Plan, shall be utilized.

*11 Equal Opportunity Requirements*

11.1 If this Contract exceeds \$10,000, Supplier shall comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

*12 Compliance Statement & Certification of Non-Segregated Facilities*

12.1 By signing the Federal Supplemental Conditions the Supplier certifies they will meet the below requirements, as they apply (\$10,000 contract and above):

The project will be financed with assistance from the United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the undersigned Supplier, I represent that:

1. I  have,  have not, participated in a previous contract or subcontract subject to Executive 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.

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2. If I have participated in such a contract or subcontract, I  have,  have not, filed all compliance reports that have been required to file in connection with the contract or subcontract. If the proposed contract is for \$50,000 or more and I have 50 or more employees, I also represent that:
3. I  have,  have not previously had contracts subject to the written affirmative action programs requirements of the Secretary of Labor.
4. If I have participated in such a contract or subcontract, I  have,  have not developed and placed on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my proposal considered or to enter into a contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS or RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications for proposed subcontractors for specific time periods) I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods). A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually). NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

*13 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions*

13.1 By signing the Federal Supplemental Conditions the Supplier certifies they will meet the below requirements, as they apply (\$25,000 contract and above):

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated. **Before signing the Federal Supplemental Conditions, read instructions for Form AD-1048, available for download at: <http://www.usda.gov/rus/water/ees/englib/pdf/usda1048.pdf>** The prospective lower tier participant certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

*14 RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grants, and Loans*

14.1 By signing the Federal Supplemental Conditions the Supplier certifies they will meet the below requirements, as they apply (\$100,000 contract and above):

The Supplier certifies, to the best of his or her knowledge and belief, that; 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan; 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions; 3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including contracts, subcontracts, and sub grants under grants and loans) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### *15 Restrictions on Lobbying*

15.1 Supplier shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable Agency regulations. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Supplier must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

### *16 Suspension of Project, Termination and Delay*

16.1 The Owner may suspend the Project or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the parties, by written notice to the other party, with identification when to resume Project. There will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension in Project by the Owner.

16.2 Termination for Cause: If the Supplier files a petition to reorganize under bankruptcy or other applicable laws, or repeatedly fails to provide deliverables, or repeatedly fails to make prompt payments to any subcontractors or for materials or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction over the Project, or otherwise violates any provision of the Contract, then the Owner may, without prejudice to any other right or remedy and after giving the Supplier minimum of ten (10) days from delivery of a written notice, terminate the services of the Supplier and take possession of the Project and of all materials, equipment, tools, machinery thereon owned by the Supplier, and finish the project by whatever method the Owner may deem expedient. If the Supplier has obtained bankruptcy protection, materials, equipment, tools, and machinery may not be taken by the Owner without consultation with the appropriate trustee or receiver.

16.3 Payments after Termination for Cause: In the case of Termination for Cause, the Supplier shall not be entitled to receive any further payment until the Project is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the Supplier. If such costs exceed such unpaid balance, the Supplier will pay the difference to the Owner. Such costs incurred by the Owner will be determined and paid accordingly.

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16.4 Other rights of the Owner: Where the Supplier's services have been so terminated by the Owner, said termination shall not affect any right of the Owner against the Supplier then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Supplier will not release the Supplier from compliance with the Contract.

16.5 Termination for Convenience by Owner: After ten (10) days from delivery of a written notice to the Supplier the Owner may, without cause and without prejudice to any other right or remedy, elect to terminate the Contract. In such case the Supplier shall be paid for all project scope executed and any expense sustained plus reasonable profit.

16.6 Termination by Supplier: If, through no act or fault of the Supplier, the Project is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the Owner fails to act on any request for payment within thirty (30) days after it is submitted, or the Owner fails to pay the Supplier substantially the sum due the Supplier, then the Supplier may, after ten (10) days from delivery of a written notice to the Owner terminate the Contract and recover from the Owner payment for all project scope executed and all expenses sustained. In addition and in lieu of terminating the contract, if the Owner has failed to act on a request for payment or if the OWNER has failed to make any payment as previously stated, the Supplier may, upon ten (10) days written notice to the Owner, stop the Project until paid all amounts then due, in which event and upon resumption of the Project, change orders shall be issued for adjusting the Contract Price or extending the Contract Time or both to compensate for the costs and delays attributable to the stoppage of the Project.

### *17 Acknowledgement of Federal Supplemental Conditions and Agency Concurrence*

17.1 The purchase/sale agreement and supplemental conditions may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Exact reproductions of the executed instrument shall be considered as valid and admissible for all purposes as if the reproduction was a counterpart original.

### *18 Payment Method*

18.1 The OWNER can only make an initial lump sum payment of no more than 25% of the total project cost upfront, as agreed upon between the OWNER and SUPPLIER. The OWNER will make an additional lump sum payment for the remaining balance of the whole contract, upon acceptance by the OWNER and Rural Development, of all Project Scope required hereunder and compliance by the SUPPLIER with all the terms and conditions of this contract.

18.2 Other types of payment schedules will not be allowed without prior approval from the Agency.

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**OWNER**

By: \_\_\_\_\_ Date \_\_\_\_\_

Typed Name: \_\_\_\_\_

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**MANUFACTURER – VENDER - SUPPLIER**

By: \_\_\_\_\_ Date \_\_\_\_\_

Typed Name: \_\_\_\_\_

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**CERTIFICATE OF OWNER’S ATTORNEY**

I, the undersigned, \_\_\_\_\_, the duly authorized and acting legal representative of \_\_\_\_\_, do

hereby certify as follows:

I have examined the attached contract and the manner of execution thereof and I am of the opinion that the aforesaid Agreement is adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said Agreements on behalf of the respective parties named thereon; and that the forgoing Agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, provisions and conditions thereof.

By: \_\_\_\_\_ Date \_\_\_\_\_

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**RURAL DEVELOPMENT**

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

By: \_\_\_\_\_ Date \_\_\_\_\_

Typed Name: \_\_\_\_\_

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