

Tab Handout 3-2h

Sample Term Sales Agreement/Contract

## Example Term Sales Contract

Sale of recyclable materials by the Recycling Program, \_\_\_\_\_.

### A. SOLICITATION/CONTRACT FORM

This contract, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Recycling Program and \_\_\_\_\_ (hereinafter called contractor), is for the sale of recycled scrap material subject to the provisions set forth hereunder. The parties agree to contract for the purchasing of the recycled scrap material as more specifically described in section c hereto. The parties agree as follows:

1. Contract period. The period of performance for this contract will be for one (1) year, from the commencement date. The contract service period shall begin \_\_\_\_\_ 20\_\_\_\_. The recycling program may extend the term of this contract for successive periods of one year by mutual agreement. The contracting officer will advise the contractor in writing at least 30 calendar days before the contract period expires of the activity's desire to extend the period of the contract. The total duration of this contract, including any extension pursuant to the option exercised under this clause will not exceed five years from the date of the original contract.

2. Payment cycle. In consideration for the materials rendered, the contractor agrees to pay the recycling program 30 days from the presentation of invoice of said material, or on expiration of this contract, whichever occurs first.

3. Invoices. The recycling program will submit invoices to \_\_\_\_\_ after the close of each monthly cycle. Each cycle shall begin and end on the second issue date. Payment of invoice will be accomplished within 30 days of presentation of the invoice.

4. Subcontracts. With prior approval of the contracting officer, a subcontractor may be used to fulfill the terms of the contract. If a subcontractor executes part or this entire contract, the contractor will continue to be held responsible for all provisions of the contract in total.

5. Payment rates. Contractors will bid fixed net price per ton based on a percentage of the price indexed from the "high end" of the 2nd edition of the current month of the \_\_\_\_\_, utilizing prices posted for the "\_\_\_\_\_" under the heading of \_\_\_\_\_. All material picked up after the second issue shall be billed on that cycle until the next month issue.

6. Deposit. A 20 percent deposit of estimated three months generation, to be retained and applied to final billing, will be required from the contractor before the first shipment. The contracting officer reserves the right to waive any and all deposits before the first load is delivered.

7. Weight of merchandise. The contractor shall utilize the scales on base \_\_\_\_\_ at building \_\_\_\_\_.

8. Contractor bids \_\_\_\_\_ percent of market.

**B. DESCRIPTION/MATERIAL SPECIFICATIONS:**

1. Name and description of material

2. Quantity of \_\_\_\_\_ will be \_\_\_\_\_ (net or gross) tons with a margin of 50 percent over or 50 percent under for the one year term.

3. All material will be stored (indoors or outdoors).

4. Prohibitive materials will not be permitted.

5. Total outthrows will not exceed \_\_\_percent.

**C. PACKAGING AND MARKING:**

Material will be picked up in a \_\_\_\_\_ container by the contractor, FOB origin. Contractor shall provide said standard \_\_\_\_\_ containers at contractor's expense.

**D. INSPECTION AND ACCEPTANCE:**

1. Recyclable merchandise inspection. Offerors are expected to inspect the merchandise offered for sale and to satisfy themselves as to merchandise quality and all general and local conditions that may affect the offers proposed. In no event will the failure to inspect the recyclable merchandise constitute grounds for a claim after award of a contract resulting from this solicitation (request for proposals).

2. Recyclable merchandise may be inspected on an appointment basis at building \_\_\_\_\_, base, \_\_\_\_\_. Appointments may be made by contacting \_\_\_\_\_, contracting officer (or COR) at (000) 000-0000. No inspections will be scheduled on Saturdays, Sundays, or on federal holidays.

**E. DELIVERIES AND PERFORMANCE:**

1. Sales of recyclable materials are on FOB origin. FOB origin is defined as being loaded by the recycling program, at the recycling programs expense, onto the contractor's or subcontractor's trailer and transported at contractor's expense to contractor's facility.

2. Removal of recyclable materials purchased by the contractor. All material must be picked up between Monday and Friday during normal business hours ({Note: insert hours of operation}). Contractor agrees to pickup material no later than three days after a request for pickup has been made by the Non-Appropriated Fund Instrumentality (NAFI).

3. It is the contracting officer's representative's responsibility to schedule all deliveries with the contractor's facility and insure all paper work is submitted correctly.

Authorized COR's telephone: \_\_\_\_\_

#### F. CONTRACT ADMINISTRATION DATA:

1. The contractor assumes complete liability for all taxes applicable to its property, income, and all of its transactions arising out of or in connection with the performance of this contract. The contractor will not be reimbursed for any direct or indirect tax imposed on it by reason of this contract or otherwise.
2. The contracting officer may, at his/her option, impose a \$25.00 {Note: Tailor to suit local requirements} administrative charge on dishonored checks received from the contractor for the payment of recyclable materials.

#### G. SPECIAL CONTRACT REQUIREMENTS:

1. Indemnity. The contractor agrees to indemnify and hold harmless the recycling program, the (military department) and the United States (including its agencies and instrumentalities), and their officers, agents and employees against liability and against any and all claims for loss, death, injury, or property damage (including costs and expenses incidental thereto), arising out of or in connection with (i) the performance of this contract, (ii) any of the activities or actions of the contractor's subcontractors, representatives, agents, or employees while performing this contract, or (iii) any of the contractor's activities or actions.
2. Damage to government property. Any damage to government property during the contractor's removal operations is the responsibility of the contractor, if deemed by the contracting officer that the contractor or his/her employee was at fault, will be repaired at the contractor's expense, to its original state or a reasonable facsimile thereof to the satisfaction of the contracting officer.
3. Dangerous property. The purchaser (contractor) is cautioned that articles or substances of a dangerous nature may remain in the property notwithstanding the care exercised to remove same. The government assumes no liability for damages to the property of the purchaser (contractor) or for personal injuries, disabilities or death to the purchaser (contractor), his/her employees or to any other reason arising from or incident to the purchase of this recyclable material or its use, or suits, actions, or claims of whatsoever nature arising from or out of the purchase of this recyclable material.

#### H. CONTRACT CLAUSES:

1. Definitions. As used throughout this contract, the following terms and abbreviations have the meanings set forth below:
  - (a) The term "contract" means this agreement and any modifications hereto.
  - (b) The term "contracting officer" means the person executing or responsible for administering this contract on behalf of the recycling program which is a party hereto, or his successor or successors.
  - (c) The term "contractor" means the party responsible for buying recyclable materials at a certain price or rate from this recycling program under this contract.

2. Advertisements. The contractor agrees that none of its nor its agents' advertisements, to include publications, merchandise, promotions, coupons, sweepstakes, contests, sales brochures, etc., Shall state, infer or imply that the contractor's products or services are approved, promoted or endorsed by the Recycling Program. Any advertisement, including cents off coupons, which refers to a NAFI will contain a statement that the advertisement is neither paid for nor sponsored in whole or in part by the particular activity.

3. Assignment. The contractor may not assign his right or delegate his obligations under this contract without prior written consent of the contracting officer.

4. Disputes:

(a) Except as otherwise provided in this contract, any dispute or claim concerning this contract which is not disposed of by agreement shall be decided by the contracting officer, who shall state his decision in writing and mail or otherwise furnish a copy to the contractor. Within 90 days from the date of receipt of such copy the contractor may appeal by mailing or otherwise furnishing to the contracting officer a written appeal addressed to the Armed Services Board of Contract Appeals and the decision of the board shall be final and conclusive. The contractor shall be afforded an opportunity to be heard and offer evidence in support of any appeal under this clause. Pending final decision of such a dispute, however, the contractor shall proceed diligently with the performance of the contract and according to the decision of the contracting officer unless directed to do otherwise by the contracting officer.

(b) The "disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph "a" above, providing that nothing in this contract shall be construed as making final the decision of any administrative official, representative or board on a question of law.

5. Examination of records:

(a) This clause is applicable if the amount of this contract exceeds \$10,000 and the contract was entered into by means of negotiation. The contractor agrees that the contracting officer or his duly authorized representative shall have the right to examine and audit the books and records of the contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.

(b) The contractor agrees to include the clause in paragraph "a" above in all subcontracts thereunder which exceed \$10,000.

6. Gratuities:

(a) The Recycling Program may by written notice to the contractor, terminate the right of the contractor to proceed under this contract if it is found after notice and hearing, by the secretary of the (military department) or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the

contractor, or any agent or representative of the contractor, to any officer or employee of the government or the Recycling Program with a view toward securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such contract.

(b) In the event this contract is terminated as provided for in paragraph "a" hereof the recycling program shall be entitled (i) to pursue the same remedies against the contractor as it could pursue in the event of a breach of contract by the contractor and (ii) as a penalty in addition to any other damages to which it may be entitled by law to exemplary damages in an amount (as determined by the Secretary of the (Military Department) or his duly authorized representative), which shall be not less than three nor more than ten times the cost incurred by the contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the recycling program provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

7. Hold and save harmless. The contractor shall indemnify, save harmless and defend the recycling program from any liability, claimed or established for violation or infringement of any patent, copyright or trademark right asserted by any third party with respect to goods or merchandise hereby sold or any part thereof. The contractor further agrees to hold the Recycling Program harmless from all claims or judgments for damages resulting from the use of products listed in this contract. Also, the contractor shall at all times hold and save harmless the Recycling Program, its agents, representatives and employees from any and all suits and expenses which arise out of acts or omissions of the contractor, its agents, representatives, or employees.

8. Law governing contracts. In any dispute arising out of this contract, the decision requires consideration of law questions; the rights and obligations of the parties shall be interpreted and determined according to the substantive laws of the United States.

9. Legal status. The recycling program is an integral part of the DoD and is an instrumentality of the U.S. government. Therefore, Recycling Program contracts are U.S. government contracts; however, they do not obligate appropriated funds of the United States. No appropriated funds of the United States shall become due or be paid a contractor by reason of this contract.

10. Modifications. No agreement or understanding to modify this contract will be binding upon the recycling program unless made in writing and signed by a contracting officer from the office that issued the contract or its successor.

11. Order of precedence. In the event of an inconsistency between provisions of this solicitation/award, the inconsistency shall be resolved by giving precedence in the following order: (1) supplies and prices, (2) special contract requirements, (3) contract clauses, (4) other provisions of the solicitation/award.

12. Termination for convenience. The contracting officer by written notice may terminate this contract, in whole or in part when it is in the best interest of the Recycling Program.

13. Termination for default. The contracting officer may terminate the contract by written notice, in whole or in part, for failure of the contractor to perform any of the provisions hereof. In such event the contractor shall be liable for damages including the excess cost of resoliciting offers for sales of recyclable merchandise; however, if it is determined that the contractor's failure to perform is without his/her or his/her subcontractor's control, fault or negligence, the termination must be deemed to be a termination for convenience. As used in this provision, the term "subcontractor" means subcontractor at any tier.

14. Clauses incorporated by reference. The provisions of the following clauses set forth in the FAR are hereby incorporated into this solicitation/award by reference with the same force and effect as though herein set forth in full. As used in the following clauses the term "government" is deleted and recycling program is substituted in lieu thereof. The date of each clause shall be the current date set forth in the far on the issuance date of the contract(s) awarded as a result of this solicitation (request for proposals). Clauses made inapplicable by the reference or by the kind of order or contract (e.g., contracts for services or purchase of supplies) instead of for sale of recyclable materials are self-deleting. The complete text of any clause incorporated in this solicitation/contract by reference may be obtained from the contracting officer.

CLAUSE NO	REFERENCE	CLAUSE TITLE
23	52.203-1	OFFICIALS NOT TO BENEFIT
24	52.203-5	COVENANT AGAINST CONTINGENT FEES
26	52.222-20	WALSH-HEALY PUBLIC CONTRACTS ACT (SUPPLY CONTRACTS OVER \$10,000 NOT WITH FOREIGN CONTRACTORS)
27	52.222-26	EQUAL OPPORTUNITY (SUPPLY CONTRACTS OVER \$10,000)
28	52.222-35	AFFIRMATIVE ACTION FOR SPECIAL DISABLED VETERANS AND VIETNAM ERA VETERANS (SUPPLIES OVER \$10,000)
29	2.222-36	AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (SUPPLIES OVER \$2,500)

## I. INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

1. Telegraphic or facsimile offers. In keeping with standard scrap markets industry practice and in consort with the Defense Logistics Agency (DLA) policy of allowing submission of facsimile offers in response to requests for proposals for the sales of recyclable materials, facsimile or telegraphic offers may be submitted in response to this request for proposals. Telegraphic or facsimile offers must be received at the place designated by the contracting officer prior to the time specified for the receipt of offers in the request for proposals. Such offers must specifically refer to this request for proposals, must include the item(s) or lot(s), estimated quantities, and the unit prices for which the offer is submitted. Additionally, the offer must contain all the representations and other information required by the request for

proposals together with a statement that the offeror agrees to all the terms, conditions, and provisions of the solicitation. Failure of the offeror to furnish in the telegraphic or facsimile offer, the representations and information required in the request for proposals may necessitate rejection of the offer. Facsimile responses must be signed by a person authorized to conduct negotiations and sent to the recycling program (attn: \_\_\_\_\_ at \_\_\_\_\_).

2. Collusion warning. Offerors are cautioned to submit their offers without consultation, communication, or agreement with any other offeror for the purpose of restricting competition. Offer (bid) rigging is a federal felony criminal offense under section 1 of the Sherman Anti-Trust Act (15 U.S.C. 1). Conviction carries with it a fine of up to \$1,000,000 for corporations and up to \$100,000 or three years imprisonment (or both) for individuals. Contractors are encouraged to report suspected violations of this criminal law to the contracting officer at (000) 000-0000. This matter is of the greatest importance to this program and your utmost cooperation in insuring that this recycling program exemplifies maximum free and open competition among offerors is solicited and appreciated.

3. Removal from the list of prospective offerors. At the option of the contracting officer, individuals or firms that fail to respond to three or more requests for proposals issued by this recycling program, or are in default regarding a contract issued by this Recycling Program may be removed from the list of prospective offerors (commonly referred to as "bidders list") and not be sent further requests for proposals from this organization until they are reinstated by the contracting officer.

4. Acknowledgment of amendments to requests for proposals. Receipt of an amendment to a request for proposals by an offeror must be acknowledged by (a) signing and returning the amendment, (b) by annotation of block #14 entitled "acknowledgment of amendments" on the solicitation/offer form (Standard Form 33), or (c) by letter, telegram, or facsimile. Such acknowledgment must be received prior to the hour and date specified for the receipt for proposals.

5. Explanation to offerors. Any explanation desired by an offeror regarding the meaning or interpretation of the request for proposals, specifications, conditions, etc., must be requested in writing and received by the contracting officer in sufficient time to allow for a reply to reach offerors before the submission of their proposals. Oral explanations or instructions given before the award of a contract(s) will not be binding. Any information given to a prospective offeror as an amendment to the request for proposals will be furnished to all prospective offerors.

6. Late proposals. Any proposal received at the office designated in the solicitation (request for proposals) after the exact time specified for the receipt will not be considered unless it is received before award is made; and (a) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers; or (b) it was sent by mail/telegram/facsimile and it is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the government installation; or (c) sent by controlled dispatch via nationally known U.S. courier (e.g., Emery, Federal Express, etc.) not later than three calendar days prior to the date proposals were due; or, (d) it was the only proposal received.



J. EVALUATION FACTORS FOR AWARD OF CONTRACT(S):

1. Single award by lot. An award will generally be made to a single responsive responsible offeror for all items for each lot. However, the recycling program reserves the right to split lots or to award by item when the contracting officer determines that to be more advantageous to the recycling program.
2. Contract(s) will be awarded to those responsible offerors whose proposals (conforming to the request for proposals) will be most advantageous to the recycling program, price and other factors considered.
3. The recycling program reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received. In addition the recycling program reserves the right to withdraw or not award a contract for which the contracting officer determines the price(s) received are not fair and reasonable.
4. Award of contract(s)/acceptance of proposal. An "acceptance of proposal," signed by the contracting officer and mailed (or otherwise furnished) to the successful offeror(s), within the time for acceptance specified in the proposal, shall be deemed to result in a binding contract proposal," signed by the contracting officer and mailed (or otherwise without further action by either party). No binding contract shall result without such issuance of a signed "acceptance of proposal" by the contracting officer.