

APD ALERT



PRODUCT DEMONSTRATION AGREEMENT

PURPOSE

To provide REE employees with an understanding of the roles and responsibilities of the Government and the vendor in a product demonstration arrangement.

POLICY GUIDANCE

Manufacturers, distributors and other companies involved in selling goods have various methods of promoting their products. One common promotional device is the product demonstration. A product demonstration is a marketing method in which a firm allows the Government to use its services/products for a limited amount of time at no cost. Product demonstrations help establish an immediate awareness of products/services and may help to sell brands. Regardless of the promotional activity, it is important that the Government has a binding agreement with the promotional partner. An agreement helps to ensure that both parties' rights are clearly understood. The Contracting Officer is responsible for forming a fully executed agreement with the vendor before the commencement of a product demonstration. The agreement should delineate the time period of the demonstration, the services/products to be demonstrated, the delivery terms, and clearly state the Government's lack of liability in the product demonstration. Additionally, it should be clearly understood that a vendor may expend capital and human resources to promote a product demonstration, but in no way does this give the contractor any type of competitive advantage or qualify them as a sole source.

Contracting Officers should use the enclosed sample agreement.

APD POINT OF CONTACT

If you have any questions regarding this Alert, please contact the Acquisition Programs and Oversight Branch (APOB), on 301-504-1725, or via e-mail at APOB@ars.usda.gov.

Enclosure

ISSUE DATE: MAY 2011

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PRODUCT DEMONSTRATION AGREEMENT

This agreement ("Agreement") is hereby made between the U.S. Department of Agriculture, Research, Education, and Economics Agencies (hereinafter called the "Government") and (enter Contractor's name). (Enter Contractor's name) desires to demonstrate its products and services for a (enter quantity) day period of time. The demonstration period will not commence until the product or service has been installed and mutually agreed by both parties the product or service is ready for use.

(Enter Contractor's name) acknowledges that the Government hereby makes no commitment, express or implied, to buy the products or services involved, or to give (enter Contractor's name) any special consideration in this or any future acquisition in which the Contractor may submit a bid or proposal.

The products or services to be demonstrated are listed herein. The demonstration of the product or services in this enclosure are at no cost to the Government and (enter Contractor's name) waives any and all claims against the Government for compensation for said demonstration.

(Enter Contractor's name) is responsible for delivery and for providing the required support to enable the evaluation to be conducted.

LIMITATION OF LIABILITY. In no event will the Government be held responsible for any loss or any direct, indirect, actual, compensatory, continuing, special, or consequential damages as a result of this demonstration. Inasmuch as this Agreement is related to an opportunity for the Government to evaluate the product or service without charge or obligation, (enter Contractor's name) makes no warranties or representations, whether expressed or implied, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. In no event will (enter Contractor's name) be liable to the Government for any loss, including time, money, goodwill, or consequential damages which may arise from use of this product or service.

The Government acknowledges that (enter Contractor's name) represents the product or service provided hereunder is copyrighted, and constitutes trade secrets and proprietary data of (enter Contractor's name). The Government acknowledges that it is obtaining no title to nor ownership to the product or services received as a result of this Agreement. The Government shall not copy or transfer this product or service, and shall treat the product or service and all associated materials as it treats its own proprietary and confidential information, provided such care is deemed reasonable. The Government shall not reverse engineer the product or service provided hereunder, in whole or in part.

This document contains the entire Agreement between the parties with respect to the demonstration. This Agreement can only be modified in writing, with the signatures of the party's authorized representatives. For the Government, the only authorized representative is the Contracting Officer.

GOVERNMENT POINT OF CONTACT

Name
Date

Signature

CONTRACTING OFFICER

Name
Date

Signature

CONTRACTOR (enter contractor's name)

Name
Title
Date

Signature