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A Producer's Guide to Specialty Grain and Oilseed Contracting

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Introduction

Market volatility, increasing breakthroughs in biotechnology, and a growing consumer demand for products with specific characteristics have sparked an emerging and growing interest in producing agricultural products with highly specialized traits. Producing and marketing higher value crops such as high lysine-corn, food-grade soybeans or waxy corn are not, however, without risk. Gaining access to technology and markets necessary to raise these specialized varieties can be difficult for an independent producer. One alternative to independent production and marketing are contracts offered for the production of these specialty and identity-preserved grains and oilseeds.

Generally still new to the grain producer, these contracts pose both advantages and disadvantages to the producer and should be clearly understood before being entered. Some contracts may be better suited to some farms, and the advantages and disadvantages of contracting can vary by contract type. Additionally, specialty crop production may best be adapted to some farms over other similar operations. Each operation should carefully examine specialty grains and be aware of the unique characteristics and requirements of the crop being produced.

The Contract

The contract is a legally binding document specifying the performance of the contractor and the contract producer. Some of these contracts are for the production and delivery of the grain; others are for the marketing of the specialty crop.

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November 2000

There are several important elements of these particular contracts that distinguish them from traditional grain and oilseed contracts. Two parties, a producer and a contractor, enter an agreement for a fixed time, usually one season. This agreement is signed and becomes effective before any seed is planted on land owned or controlled by the producer. To be acceptable to the contractor for delivery, the grain or oilseed must be produced and handled according to the contract's terms. A pricing mechanism is determined, including premiums and discounts for quality above or below expectations. And finally, the status of the producer in relation to the contracting company is defined and commonly refers to the producer as an independent contractor and not an employee, partner, agent, or joint venturer of the contracting company.

Benefits & Risks of Contracting

There are gains and drawbacks to both the contractor and the producer of contracting specialty grains and oilseeds. Specialty crop contracting occurs because, in most instances, the benefits to both the producer and the contractor outweigh the risks to both. Each individual entering a contract must however, make this determination for his/herself.

Producer Benefits

Specialty crop contracts are used more frequently for several reasons. The producer is able to reduce financial risk, access new technologies, capital and markets, receive a price premium, and reduce marketing decision risk. With a contract, the producer also reduces the uncertainty of locating a buyer for trait-specific crops.

Reduced Financial Risk

Financial risk can be reduced by providing a guaranteed payment or premium to the producer to mitigate the need to borrow operating capital for crop inputs. Price decline is the principal type of risk assumed by producers. Setting a price in advance or having a price premium on the grain reduces the risk of price decline.

Access to New Technologies

Producers under contract often have advance access to the newest in technology. This technology could be unavailable or undesirable to the producer if not in a contracting situation. Often the company will contract production to limit access to new technologies, lower costs, or limit access to the end user, making the technology undesirable to a producer. Therefore, contracting may be the only way for producers to obtain trait-specific seeds for which a company holds the intellectual property rights or access technical assistance for raising specialized crops.

Access to New Markets

A producer under contract may gain access to markets that would have been inaccessible or difficult to enter for an non-contracting producer. Signing a contract with a company established in a new or value-added market will reduce the producer's profit share. It will, however, eliminate the expense and difficulty involved in developing and accessing niche markets.

Price Premium

The primary benefit to the producer of contract production is a paid premium resulting in a higher price for the product. The producer contracts to raise a special crop that has added value derived from the demand for the special trait of the crop. Special care is taken by the producer to preserve the identity and trait characteristics of the crop and maintain required high quality levels. Compensation for the value added by the producer in growing and handling a specialty crop is returned to the producer in the form of premiums.

Reduced Marketing Risk

Producers are also able to reduce their marketing risk as many of the marketing decisions are made in advance or are listed in the contract. Marketing arrangements that are established in contracts include the delivery point, delivery time, and price.

Contractor Benefits

The contractor benefits by improving quality control and supply management, taking advantage of new technologies, protecting intellectual property and markets, and reducing financial risks.

Quality Control & Supply Management
Contracts grant the contractor some assurance of grain or oilseed quality and timely delivery, minimizing storage and down time costs to the company. The contractor is able to better estimate the supply and delivery schedule of the specialty grain or oilseed. This reduces contractor uncertainty when planning for production and sales to customers, determining the need for additional sources, or identifying an alternative to the preferred specialty grain.

Reduced Financial Risk
Offsetting financial risk is a contractor benefit through both price setting and the shift of production costs to the producer. This negates the need for a large investment in production inputs such as land, labor, and machinery. The contractor establishes a price for the required specialty grain, allowing contractors to better estimate the cost of inputs and conduct advance financial planning. This may be preferable to assuming the risk of purchasing the grain as needed and facing the price uncertainty of the market.

Control of Technology & Markets
Contracts provide some control over the distribution of technologies. Most contracts specify that the producer cannot hold back seed or sell production to a third party, therefore, distribution of the patented seed or variety is controlled.

Producer Risks

The contract producer faces several risks when growing a crop under contract. Examples include: producers run the risk of making a long-term investment with short-term contracts, payment default, limited returns, reduced management control, and identity preservation requirements.

Long-Term Investments & Short-Term Contracts
Grain and oilseed contracts do not require the degree of investment seen in livestock contracts. However, storage units and specialized machinery may be required to meet the contract's quality and delivery specifications. A producer's expectations may be that the crop will be raised for a period of time sufficient to pay for a investment. However, most specialty grain and oilseed contracts are single-year with no guarantee of renewal.

Payment Risk
As in any situation, there is a risk of not being paid for work that has been done or crops that have been delivered. The contract should be clear on what options are available to the producer if the contractor is unable to pay for the delivered crop. In cases when the contractor retains title to the crop before payment is made, the producer essentially serves as a creditor to the contracting company. This risk can be compounded if the grain indemnity fund does not apply because either the company is not complying with state grain dealer laws or the contract is not for a sale of grain, but rather for services.

Limited Returns
Producing for an intermediary rather than the end-user reduces the producer's potential return on higher-value crops. For example, a producer could capture all the value added to a crop by selling food-grade soybeans directly to a processor in Japan. Instead, contracting means sharing the added value with the contracting company that, in turn, markets them to the Japanese customer.

Reduced Management Control
Contracting also often results in the transfer of a portion of the management control away from the producer to the contractor. Such agronomic decisions as tillage practices, fertilizer application, and pesticide use can be affected by contract production. Field inspection may be required to ensure that proper management practices have been used. Some producers may be unwilling to relinquish their decision making authority, or to allow access to their fields for the contractor's right to inspection.

Identity Preservation Requirements
Identity preservation is a key to specialty grain production, therefore, the specialty grain must be almost completely free of commodity grains. Contamination of commodity grain in specialty grain will make it less desirable and lower its market value. This means the producer must maintain isolation of the specialty grain fields and proper and thorough cleaning of all handling and harvesting equipment is needed to maintain identity preservation.

Contractor Risks

The contractor also assumes risks. Not finding amenable parties, the possibility of litigation, losing control over the technology, and contracting with unreliable or inefficient producers all pose considerable risk for the contractor.

Finding Amenable Parties
Relinquishing production control through contracts allows the contractor to transfer production risk and capital requirements; however, during any given year the contractor may be unable to locate producers willing to grow the crop. The contractor could find they have a contract that no one is willing to sign. An untried or poor performing crop could make producers hesitant or unwilling to contract for production. The contract could also be undesirable to producers if the premiums are not large enough to cover the additional costs of production or lost yields. A producer in evaluating a contract with low premiums may be able to grow the commodity crop for more profit than the specialty crop.

Litigation Possibilities
A contract is a legal document, which may bring the possibility of litigation. Litigation can arise between the two parties because of misunderstandings. These could be avoided through a complete understanding of the duties and rights of both parties before the contract is signed. Producer misunderstandings may cause a failure to fulfill the contract terms, and could result in litigation.

Control Over Technology
While contracts provide contractors some control over the distribution of patented technology, it is not as risk-free as growing the crop themselves. By expanding the number of individuals holding the technology, contractors run the risk of the technology moving into the hands of competitors or illegal markets.

Producer Reliability
The primary risk contractors face is producers not meeting the terms of the contracts. This leaves the contractor without the quantity or quality required to meet customer demands. The contractor wishes to contract with those that will reliably provide a steady supply of a consistent and quality product. Unreliable producers can cost the contractor in lost or poor quality grain, untimely deliveries, or non-delivery. Inefficient production, leading to lower yields and lower quality grain, results in a financial loss to the contractor.

Contracting Effects on Risk Management Strategies

It is important to remember that contracts impact many of the risk management strategies currently being used by producers. Contracts can change the relationships producers have traditionally had with landlords, suppliers, lenders, and other service providers. They affect risk management strategies for financial and tax considerations, yields, pricing, quantity and quality obligations, ownership transfer, and payment considerations. It is important that producers recognize these differences and incorporate appropriate risk management strategies into their business plan.

Relationships

Contracting can affect the producer's long term relationships. Contracts may require producers to obtain inputs from different suppliers instead of long-term suppliers that are either preferred or closer to the farm. The producer's relationship with landlords may alter if the contract requires landowner approval to produce the crop. Even

the choice of marketing outlet may change to meet the requirements of the contract.
Relationships with lenders may also change with contract production. In many contracts, the producer does not own the crop that is growing in the field, therefore, the crop cannot be used as collateral for production loans. Because reduced financial risk is often experienced by producers; contracts may increase the willingness of lenders to offer loans to these contracting producers. Finally, producers may want to consider that capitalization for production of the crop may shift from their traditional lender to the contracting company.

Financial & Tax Concerns

In traditional commodity production, the producer has nearly complete authority over his or her finances, taxes, and the strategies that affect the finances of the operation. Timing purchases and sales can reduce the operation's tax burden. Using contracts, the finances of the farm can dramatically change. Some contracts could provide for a mid-year payment to the producer. Since many contracts specify when the crop is to be delivered, there is little opportunity for the producer to decide when it is financially advantageous to deliver. The timing of the delivery could affect when payments to suppliers and banks are made and impact the tax strategy of the farm.

Yield Penalties & Basis for Comparison

In many instances, production levels for specialty crops are lower than traditional, commodity crops, introducing the risk of yield penalties to the producer. Yield penalties (or drag), the difference between the yield of commodity grain versus the yield of specialty grain should be taken into consideration when making comparisons between conventional and specialty crops. The premiums are designed to encourage the growing of the specialty crop and to cover yield drag. Compensation outlined in the contract should be adequate to cover this loss in production and be incorporated into the producer's risk management strategy.

Pricing

A commodity producer has several pricing alternatives including hedging, delayed pricing, options, and cash sale at harvest or delivery. When contracting, the producer must be aware that the pricing may be handled differently. Some contracts may only allow for a cash sale at harvest or delivery plus the premium. Other contracts may allow a producer to use all the alternatives traditionally available, plus premium.

Quantity & Quality Obligations

For many producers there is no minimum quantity of commodity grain that must be delivered. In contract production, however, there may be a minimum quantity that must be delivered to fulfill the contract. If these bushels are not available from on farm production, the producer may be required to pay a cash penalty or find additional bushels of the specialty crop for delivery to fulfill the contract.

For commodity grain producers standard grades indicate sufficient quality. Many contracts will require at least standard grade plus the qualities of the specialty crop. If the qualities required by the contractor are not met, the crop will not receive the full, or any, premium and could be subject to rejection. Qualities that must be met include the quality of the desired trait, moisture, damage, foreign matter, contaminants, test weight, and others.

Transfer of Ownership

In a traditional production system the grower retains ownership of the crop until it is sold. However, in some contracts the crop is never owned by the producer. Instead, it is the property of the contractor. Often, production loans cannot place a lien on the growing crop, because the crop does not belong to the producer. In other contracts, the producer retains ownership of the crop and ownership is transferred during production or at delivery.

Payment

Producers have had protection against non-payment when they deliver their crop to an elevator in the form of indemnity funds. When

grain is sold to a licensed grain dealer, the indemnity fund ensures payment to the producers. If the contractor is not a licensed grain dealer, the indemnity fund will not cover the producer. If the contract includes payment for the service of producing the grain and the producer never owned the grain, sale of grain does not occur and again, the indemnity fund does not protect the producer.

Duties & Responsibilities

Contracts can provide opportunities for enhancing income or minimizing risk. Producers should thoroughly review any contract and consider: 1) willingness to consult experts; 2) production issues; 3) payment and delivery issues and; 4) legal issues.

The contract should spell out who is responsible for each part of the production and/or marketing process. Before committing to a contract, understand the entire document. Too often producers are unwilling to seek legal counsel to review the contract. Contracts are written to favor the entity offering the contract – legal advice can be a bargain if it helps producers avoid unfavorable terms. Other experts that can assist in determining the advantages and disadvantages of a contract include tax professionals, lenders, the Extension Service, and other producers.

One of the most important considerations when contracting is trust. It is important for both parties of a contract to be comfortable with the individuals with whom they are doing business. A certain level of trust is vital to the completion of a successful contract.

Terms

It is vital that both parties review and understand the terms and financial obligations of the contract. Because there is no standard grain or oilseed contract, outside legal and financial experts should be employed to ensure the understanding by both parties. Producers should evaluate all contracts under consideration to identify the one that is most satisfactory.

Producers should be comfortable with the contract terms specifically related to compensation, contract length, conditions of renewal and termination, conflict resolution, and guarantees made by either party.

When a written contract is in place, verbal explanations or interpretations should not be viewed as binding. Any changes or clarifications should be confirmed in writing.

Compensation

Clearly understanding how and when payments, including premiums and bonuses, will be calculated and made is important to the producer's overall satisfaction with the contract. For most contracts the producer is paid after the delivery of the crop. This payment may either be prompt or delayed depending upon the procedures of the contractor. Payment issues should be addressed before signing the contract with the period for payment clearly identified.

Yield Loss

Natural disasters are an inevitable part of production agriculture. When yields suffer because of natural disasters, it may become difficult for the producer to fulfill the terms of a contract. Since yield loss due to natural disaster is beyond the control of the producer, many contracts will specify that in the event of a natural disaster no penalty will be assessed to the producer.

Yield losses due to the characteristic of the hybrid, or lower than anticipated yields could negatively impact the producer. Contract requirements may include finding and delivering additional quantities of the specialty grain or paying a cash penalty to the contractor. In these contracts it is the responsibility of the producer to deliver the minimum quantity of the specialty grain.

Division of Expenses

In contracting there may be provisions for the contractor to pay for a portion of the expenses of growing the crop. For instance, specialty seeds may be provided to the producer at no charge, provided all remaining, unplanted seed is

returned by a certain date, allowing contractors to protect the intellectual property of the hybrid. The contractor may also provide other inputs or the contract may detail the division of other expenses. The responsibility for payment of expenses should be completely described to eliminate misunderstandings.

Length

Most contracts are for one growing season with no provisions for subsequent years. Often renewal of a contract is sought before the performance of the first contract can be evaluated.

Insurance

Producers may be required by their contract to obtain crop insurance against natural disasters that could damage the crop. Some contractors use this to ensure the receipt of either cash or grain from the producer. Copies of the insurance certificates could be required to ensure that the producer has protected the contractor's investment and future returns from the crop.

Termination

Occasionally, a contract cannot be fulfilled due to circumstances beyond the control of the contractor or producer. If this happens, the contact should be specific on what duties are to be assumed by the party breaching the contract. If the producer is unable to deliver the specified quantity, the producer may be required to find grain alternatives or compensate the contractor with a cash payment. If the contractor breaks the contract, the producer should have a clear understanding of how the crop may be disposed of or marketed and be compensated for lost value.

Delivery & Marketing

A delivery time and destination should be included in each contract. This provision should identify the party responsible for delivery of the crop. The time of delivery may be precisely set or there could be a buyer's call established. A buyer's call is set up for a producer to deliver within an allotted time after receiving the call from the buyer.

Equipment & Facility Requirements

The production of a high quality specialty crop often requires special equipment or structures. Producers that lack adequate and proper storage for specialty crops may be required to add such structures if on farm storage is required. It is generally the responsibility of the producer to have, or purchase, equipment an/or structures.

Management Practices

Contracts may call for specific procedures to be followed for the production of the crop. Management decisions such as hybrid selection, planting rates, pesticides selection, tillage practices, and storage conditions, may be stipulated in the contract. A contractor may wish to specify management decisions to ensure the crop it receives will meet defined processing specifications. Contractors engaged in exporting will be interested in production practices to assure the presence of desired qualities in the grain they buy.

Legal Issues

Legal issues that should be considered before signing a contract include the method of resolving disputes and determining which state law applies. Many contracts include an alternative to litigation such as mediation or arbitration, which can be considerably less expensive than litigation in the courts.

Types of Contracts

There are several general contract types in use including marketing, or sales, contracts; bailment production contracts; personal service contracts; and pool contracts with a closed cooperative.

- Marketing Contracts involve a firm agreement to accept or deliver a specified quantity of grain or oilseed with specific traits produced using specific production practices.

- Bailment Contracts specify the contractor retains title to the growing crop and the producer is a temporary holder of the genetic seed input that provides a critical genetic trait.

- Personal Service Contracts compensate producers for the use of their land, labor, and machinery. The contractor provides non-land production inputs and tends to be more involved in management decisions.

- Pool Contracts with Closed Cooperatives specify delivery to "New Generation" cooperatives by member-owners and are generally set up as sales contracts. New Generation cooperatives generally require investment in the business in direct proportion to the producer's rights and commitments to deliver under the contract.

Summary

Contracts – whether verbal or written – are something producers need to become better acquainted with in agriculture to mitigate risk and/or capture a premium to enhance the price received. Specialty contracts, no longer limited to fruits, vegetables, or livestock, are appearing more frequently in grain and oilseed production. Contracts to produce these specialized products offer producers a way to add value to a crop and access higher-value markets. However, contracts are a new way of doing business and require careful consideration and understanding of the specific terms of the contract as well as how they impact traditional ways of doing business.

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GRAIN CONTRACT CHECKLIST

Developed by Iowa Attorney General Tom Miller's Production Contracts Task Force for the Iowa Quality Grain Initiative, Iowa State University, January 1996

Modified for Ohio Law by Constance Cullman Jackson, Ohio Farm Bureau Federation January 1999

A. CONSULT EXPERTS. BEFORE COMMITTING YOURSELF TO THIS CONTRACTUAL OBLIGATION, BE ABSOLUTELY SURE YOU UNDERSTAND THE ENTIRE DOCUMENT.

1. Attorneys.

___ If you do not fully and completely understand the legal terms in the contract or the legal consequences of the contract, then you should consult an attorney.

2. Financial and technical experts.

___ If you do not fully understand the financial or tax consequences of the contract, then you should consult your lender, a tax professional, the Extension Service, agricultural consultant or others.

3. Other producers.

___ Talk to other producers who have had experience with contracts. They may be a good source of advice.

B. PRODUCTION ISSUES.

1. Facilities and Equipment.

___ Does the contract require you to make investments in equipment or facilities?
___ Is special drying, storage, irrigation, or other handling equipment needed? Does this equipment require extra management, fuel, utilities, or repair?
___ Is the duration of the contract adequate to recover your investment? Can the contract be terminated before your investment is fully recovered?
___ Does the contract require your facilities or equipment to be approved or certified? Is special calibration needed?
___ If identity-preserved grains are involved, then will you need special storage facilities?

2. Production Costs.

___ Do you know your costs of production for the crop involved? If not, then you should consult the Extension Service or others for estimated costs of production.
___ Do the requirements of the contract increase the production costs above those normally expected?
___ Are you required to use inputs or techniques that are more expensive than normal?
___ Are you required to buy inputs from a certain source?

3. Yield/Production Penalty.

___ What is the expected yield of the crop involved?
___ If specialty grains are involved, then is the projected yield less than one would normally expect?
___ Do you receive compensation for this yield reduction?

4. Growing Obligations.

___ Are you able to comply with the growing obligations in the contract? Are you willing to comply with these obligations and give up certain decision-making freedom on how, when, and where to grow crops?
___ Is a specific pest control program required?
___ Is the hybrid involved herbicide susceptible or resistant? Is the hybrid involved insect susceptible or resistant?
___ Is a particular fertility program required?
___ Do you need to maintain a distance from other crops to prevent cross pollination or other adverse effects?
___ How much crop residue is left from this crop and how does that impact your conservation compliance plan?
___ What authority does the contractor have to enforce growing obligations? Can the contractor enter your land and do work on the crops? If so, who is responsible for any damage?

C. PAYMENT AND DELIVERY ISSUES.

1. Payment Terms.

___ How are you being paid? Are the terms of payment clear?
___ If you are being paid on the price of the grain, then how is that price established? Is it established basis Chicago Board of Trade or is there a different pricing method?
___ When is the grain priced? Can the grain be forward priced?
___ Who, in fact, markets the grain?
___ Are corn or soybean check-off funds collected on the grain?
___ Is the schedule of payments firmly set? Does this schedule satisfy your cash flow?

2. Premiums/Bonuses.

___ If there are premiums or bonuses involved, then how are they calculated and when are they paid?
___ Can you examine the calculations used to determine these premiums or bonuses?

3. Condition of Crop.

___ What does the contract require as to the condition of the grain such as moisture, foreign material, test weight, oil content, protein content, etc.?
___ Has the Federal Grain Inspection Service established quality standards for this grain and these factors? If not, then what standards are used? Can you achieve those standards?
___ What about aflatoxin and other mycotoxins? Is this grain mycotoxin resistant or susceptible? What are the mycotoxin limits under the contract?
___ Who conducts the quality tests and when?
___ If you disagree with the test results, then can you get a third-party, independent test? How are conflicting test result disputes resolved?
___ What are the penalties for quality non-compliance? How is the amount of the penalty determined? Is it set in the contract language itself or is it determined at the time of harvest?
___ Are you penalized if the quality non-compliance was caused by adverse weather conditions or other factors out of your control?
___ Who bears extra costs incurred to achieve quality compliance (such as extra drying to achieve test weight)?
___ Does quality non-compliance on a portion of the crop result in penalties on all of the crop involved in the contract?
___ If the grain is rejected as a specialty grain, then can it be sold in the open market as regular grain?

4. Amount of Production.

___ Are you required to deliver a set amount of grain under the contract?
___ What is the penalty for failing to deliver this amount?
___ Do you have to find substitute supplies to fulfill the contract if you have a shortfall?
___ Are you responsible if the shortfall is due to an "Act of God", such as weather, insects, plant disease?
___ If the weather prevents planting, then can you make adjustments in the number or location of acres? Are there trigger dates for these adjustments?
___ Are you responsible if the shortfall is due to production decisions you did not make (such as fertility or pest programs)?
___ Under Iowa's (and Ohio's) Uniform Commercial Code, it is easier to be excused for a breach of contract because of impracticability (such as bad weather) if the contract involves the output of particular tracts of the land. Does this contract list the fields on which the crops are to be grown?

5. Delivery Site/Delivery Date.

___ Where is the crop to be delivered?
___ Are there any special handling procedures?
___ Who pays for the delivery to the site?
___ When is the crop to be delivered?
___ Is the date set in the contract? If not, then who sets the date?
___ What is the penalty for late delivery? Early delivery?
___ What if late delivery is due to circumstances beyond your control?

6. **Payment Date.**

___ When are you entitled to receive payment?
___ If payment may be made after delivery, then what guarantee of payment do you have?

7. Ownership of Crop/Risk of Loss

___ Who owns the crop?
___ Usually the party with title of ownership bears the risk of loss. Does the contract modify this rule?
___ Who bears the risk of loss of the crop in the field, in storage, or in transport?

8. Grain Dealer Status/Grain Indemnity Fund.

___ Ohio law establishes an indemnity fund to compensate unpaid sellers of grain if: (a) the buyer was a licensed grain dealer, and (b) the transaction was considered a sale of grain. Are you covered by the indemnity fund?
___ Is the contractor here a licensed grain dealer?
___ Is this contract a sale of grain? Or is it a contract to pay you for services?

9. Liens.

___ Does the contract prohibit you from granting liens or security interests on the crop to a third party such as a landlord, lender, or supplier?
___ Will the contractor grant you a producer's lien in the crop superior to other interests?

10. Contractor Credentials.

___ If you have concerns about getting paid under the contract, then will the contractor provide you with a financial statement? A list of producers the contractor has contracted with in the past?
___ Is the contractor bonded for this type of obligation?
___ Does it appear that the contractor is committed to contracting in the region? Has the contractor made investments in fixed assets or relocated management to the region? Is contracting the contractor's core business?

11. Your credentials.

___ If the contractor has questions about your ability to perform the contract, then are you willing and able to give the contractor a financial statement and names of individuals who will verify your financial stability and management abilities?

12. Parent Company Responsibility.

___ If the contractor is a subsidiary company, then does the contract make the parent company responsible for payment if the contractor defaults?

D. OTHER LEGAL ISSUES.

1. Dispute Resolution.

___ Does the contract provide for alternative dispute resolution such as mediation or arbitration before the parties can take a dispute to court? Alternative dispute resolution often is far less costly and disruptive than litigation.
___ Mediation is negotiation between you and the contractor facilitated by a neutral third party.
___ Arbitration is a process where a third party arbitrator hears the dispute like a judge and renders a decision, usually binding on the parties.

2. Termination of Contract.

___ Under what conditions can the contractor terminate the contract?
___ Who determines whether those conditions are met? Are there objective standards or is it in the discretion of the contractor? For example, can the contractor terminate the contract if the contractor determines you have not complied with quality provisions? Or, does the contractor have to verify the quality problems with independent testing?
___ Can the contractor terminate the contract for minor breaches of the contract?
___ How much notice does the contractor have to give prior to termination?
___ Are you given an opportunity to cure a problem before termination? How much time are you given for this?
___ What are your rights after termination by a contractor?
___ Can you sell or use the crop not purchased under the contract?
___ Under what conditions may you terminate the contract?
___ What if you get sick, disabled, or die? What if you go bankrupt?

3. **Renewal of Contract.**
   ___ Under what conditions can the contract be renewed?
   ___ Again, are there standards or is it up to the contractor?

4. **Legal Relationship of Parties.**
   ___ What legal relationship does the contract create between you and the contractor? Is it a landlord/tenant relationship, employer/employee relationship, independent contractor, partnership, joint venture, agency?
   ___ Does the contract refer to a bailment?
   ___ The legal relationship involved will determine your rights and duties under the contract and will have important tax consequences.

5. **Approval of Others/Assignment.**
   ___ Do other parties have to approve the contract, such as your landlord, lender, or spouse?
   ___ Can the contract be assigned or transferred by you or by the contractor to other parties? This may have important tax consequences.

6. **Farm programs.**
   ___ How will the contract affect your eligibility for farm program payments?
   ___ To be eligible for USDA programs, you must have a "beneficial interest" in the commodity. This is determined by looking at the contractual terms regarding title, risk of loss, and payment.
   ___ Is the crop considered a program crop for purposes of payment or base retention? How will this affect your established farm program yield?

7. **Insurance.**
   ___ Are you required to buy multi-peril, hail, or other crop insurance? Liability insurance (for risks such as pesticide drift)?
   ___ Can you get Federal Crop Insurance for the crops involved? If so, then can you use your actual production history or will other yield determinations be used?

8. **Protection of Intellectual Property.**
   ___ Are you required to take any special steps to protect the contractor's property interests in the grain's germ plasm (genetic material)?
   ___ Are you responsible for the security of germ plasm?
   ___ Who owns the germ plasm? Does the contract limit your ability to save seed to plant on your own farm in future years?

9. **Choice of Law/Venue/Change of Law.**
   ___ If the contractor is from another state, then does the contract specify the state law that governs? Is this choice of law fair?
   ___ Does the contract set a venue (location) for any lawsuit that might be filed? Is this location fair?
   ___ Does the contract permit renegotiation or nullification of the contract if the laws governing production contracts are changed?

10. **Duration of Offer.**
    ___ How long do you have to accept the contract? Is there an expiration date for signing?

11. **Put It in Writing.**
    ___ You should not rely on oral agreements or interpretations of the contract. Reduce all understandings or modifications to writing.