

**USDA-FSA-KANSAS CITY COMMODITY OFFICE
MASTER SOLICITATION FOR COMMODITY PROCUREMENTS**

EFFECTIVE DATE: SEPTEMBER 1, 2005

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Part 1 Instructions to Bidders

This solicitation, called the Master Solicitation for Commodity Procurements (MSCP), is used for the solicitation of bids and award of contracts for various commodities under domestic and foreign food assistance programs administered by the Kansas City Commodity Office (KCCO). KCCO will periodically issue invitations for bids (IFB), available at <http://www.fsa.usda.gov/daco/procure.htm>, requesting the particular commodities being procured. Each IFB will contain a web link to the MSCP.

Bidders are required to read the MSCP, IFB, and USDA Commodity Requirements to understand the solicitation, evaluation, and award process for KCCO commodity acquisitions. The MSCP will be updated as necessary to incorporate changes in law, regulation, and acquisition policies and procedures. Bidders should not assume that a copy of the MSCP, once downloaded, will remain effective. The effective date at the top of the MSCP document will govern which version of MSCP is applicable to a particular IFB. Current changes to the MSCP will be highlighted in each version. Prior versions of the MSCP will be archived and available.

The following web sites are being provided to potential bidders to obtain the full text of the applicable Federal Acquisition Regulation (FAR), and the Agriculture Acquisition Regulation (AGAR) provisions and clauses incorporated in the contract:

<http://www.acqnet.gov/far/>

<http://www.usda.gov/procurement/policy/agar.html>

Part 2 Solicitation Provisions

Section A KCCO Provisions

1. Eligibility of Bidders

To be eligible to submit a bid, the bidder shall:

- (a) Demonstrate its ability to meet the prescribed standards specified in the Government's qualification requirements located at <http://www.fsa.usda.gov/daco>. This process will determine that a potential contractor has the quality, fitness, capacity, and experience to satisfactorily perform the proposed work and has demonstrated the requisite trustworthiness. The Government reserves the right to adjust, limit, suspend or rescind any potential contractor who has been deemed qualified and placed on the Government's Qualified Bidders List based on any subsequent information. The Government reserves the right to waive any minor irregularity and/or omission in the information contained in the qualification application that has been submitted.
- (b) When specified in the IFB, meet the requirements of the Total Quality System Audit (TQSA) program. Bidders shall be allowed to bid only from plants that have received an audited score of at least 80 points (exclusive of a major nonconformance in any item of the TQSA Report Form TQ-003). A result of one major nonconformance in any item resulting in a Corrective Action Request or three or more minor nonconformances in any section of Form TQ-003 would preclude participation in commodity purchase programs until such time corrective action is determined, implemented, and verified as effective. The contracting officer will make all final decisions regarding corrective action compliance. TQSA Supplier Guidelines setting forth the requirements may be obtained at <http://www.fsa.usda.gov/daco/pdd/tqsa.htm> or by contacting the contracting officer.

- (c) For dairy products, have a number of dairy plants approved by Agricultural Marketing Service (AMS) sufficient to produce the quantity offered, and when specified in the IFB, meet the requirements of the TQSA program. Bidders shall be allowed to bid only from plants that have received an audited score of at least 80 points. However, a result of “0” in any element of the TQSA Report Form TQ-003 will require AMS commodity inspection until such time corrective action is implemented and verified as effective. The contracting officer will make all final decisions regarding corrective action compliance.
- (d) For f.o.b. vessel bulk grain shipments:
 - (i) Have a Uniform Grain and Rice Storage Agreement (UGRSA) with CCC and be on CCC’s List of Approved Warehouse, or have a put through agreement or other means to assure timely delivery through an export elevator having a UGRSA or on CCC’s List of Approved Warehouses, with the ability to load ocean-going vessels and barges from a spout that is physically attached to the storage location.
 - (ii) Have a UGRSA with CCC and be on CCC’s List of Approved Warehouses or have a put through agreement or other means to assure timely delivery through a dockside facility or a floating Mid-stream facility for exporting milled rice or soybean meal.
 - (iii) Have the ability to issue or cause to be issued export weight and grade certificates covering the exportation of the product at the location of the elevator. The certificates shall be acceptable to the FGIS.
 - (iv) Have approved loadout rates for tankers and tween-deckers.
 - (v) Trans-shipment will be allowed providing the origin of the loading is out of the Great Lakes at an approved UGRSA warehouse. The original laker vessel shall be loaded at the UGRSA and trans-shipped to a larger ocean-going vessel most commonly in the St. Lawrence Seaway.
- (e) For Instore bids, have a UGRSA and be on CCC’s List of Approved Warehouse or be recognized members of the grain industry with either direct ownership of the UGRSA warehouse named in the bid or be otherwise able to furnish negotiable warehouse receipts or certified KC-228’s issued from the approved UGRSA warehouse named in the bid.

2. Submission of Bids

- (a) Submit bids to the office specified in the IFB at or before the exact time specified in the IFB. Submission of bids by any means other than as specified in the IFB will be determined nonresponsive. Bids that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.
- (b) For regular mail or hand delivered bids, the envelope containing the bid is to be sealed and marked with the name and address of the bidder. Bids submitted by express mail shall be sealed inside a second envelope. All envelopes shall be plainly marked: “Do Not Open Until Prescribed Time Under Solicitation Number (enter appropriate number).” For express mail bids, this statement shall be printed clearly on the outer express envelope, not the mailing label.
- (c) For bids submitted using electronic commerce, the bidder is responsible for choosing its own Internet Service Provider (ISP) to transmit, translate, or carry data between the bidder and the Government. The bidder is responsible for the cost of its third-party network. The Government will not be responsible for any

failure attributed to the transmission of the bid data prior to being accepted and stored on the Government's web server including, but not limited to, the following:

- (i) Any failure of the bidder's computer hardware or software;
- (ii) Availability of the ISP;
- (iii) Delay in transmission due to the speed of the modem;
- (iv) Delay in transmission due to excessive volume of Internet traffic;

3. Period of Acceptance of Bids

The bidder agrees to hold the prices in its bid firm through the contract award date and time specified in the IFB.

4. Evaluation of Bids

(a) The Government will award a contract(s) to the responsible bidder(s) whose bid(s) conforming to the solicitation will be most advantageous to the Government, price and price-related factors considered. The following factors shall be used to evaluate bids:

- 1) For commodities purchased for domestic programs, the total cost to the Government to deliver the product to the ultimate destination, or;
- 2) For commodities purchased for export programs, the lowest-landed cost to the Government to deliver the products to overseas destination, or;
- 3) For commodities purchased for instore delivery, the total cost to the Government including location and storage rates.

With respect to factor number 2 above, bids for which the Government has not received matching ocean freight offers/indications shall not be considered.

(b) HUBZone Program

The Government will award contracts to eligible HUBZone bidders in accordance with FAR Subpart 19.13, except for price evaluation preference mandated by the provisions of 15 U.S.C. 657a, 15 U.S.C. 632(p)(5)(A)(i)(III)(cc). The HUBZone price evaluation preference shall be applied as follows.

For agricultural commodities procured for export food aid programs:

In accordance with 15 U.S.C. 657a, the price evaluation preference shall be 5% on the first portion of a contract to be awarded that is not greater than 20% of the total volume of each commodity being procured in a single invitation.

For agricultural commodities procured for domestic food distribution programs:

In accordance with 15 U.S.C. 657a, the price evaluation preference shall be:

- 1) 10% for the portion of a contract to be awarded that is not greater than 25% of the total volume being procured for each commodity in a single invitation;
- 2) 5% for the portion of a contract to be awarded that is greater than 25%, but not greater than 40%, of the total volume being procured for each commodity in a single invitation; and

- 3) 0% for the portion of a contract to be awarded that is greater than 40% of the total volume being procured for each commodity in a single invitation.

Section B FAR Provisions

52.204-8 Annual Representations and Certifications (Jan 2005)

Note: Bidders shall complete paragraph (b) of this provision using applicable method for submission of bids as specified in the IFB.

52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29 (Aug 1998)

52.214-4 False Statements in Bids (Apr 1984)

52.214-5 Submission of Bids (Mar 1997)

52.214-6 Explanation to Prospective Bidders (Apr 1984)

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids (Nov 1999)

52.214-10 Contract Award-Sealed Bidding (Jul 1990)

52.214-12 Preparation of Bids (Apr 1984)

52.214-31 Facsimile Bids (Dec 1989)
(Applicable when facsimile bids are authorized by the IFB.)

52.216-1 Type of Contract (Apr 1984)

The Government contemplates award of a firm fixed price contract resulting from this solicitation.

(End of provision)

52.216-27 Single or Multiple Awards (Oct 1995)
(Applicable for Indefinite Delivery contracts.)

52.232-15 Progress Payments Not Included (Apr 1984)

52.233-2 Service of Protest (Aug 1996)
Location where a protest may be served on the Contracting Officer:
the issuing office as indicated in the IFB.

(Applicable for all contracts expected to exceed the Simplified Acquisition Threshold of \$100,000.)

52.252-1 Solicitation Provisions Incorporated by Reference (Feb 1998)
This solicitation incorporates one or more solicitation provisions by reference,

with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at these addresses:

<http://www.acqnet.gov/far>

<http://www.usda.gov/procurement/policy/agar.html>

(End of provision)

52.252-3 Alterations in Solicitation (Apr 1984)

Portions of this solicitation are altered as follows:

52.214-3 Amendments to Invitations for Bids (Dec 1989)

(Amendments shall be acknowledged only by the method specified in the IFB.)

52.214-22 Evaluation of Bids for Multiple Awards (Mar 1990)

(Individual awards will be for the items or combination of items that result in the lowest aggregate cost to the Government, excluding the assumed administrative cost.)

52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999)

(Compliance evaluations will be conducted on a post-award basis.)
(Applicable only for contracts exceeding \$10,000,000.)

(End of provision)

Section C AGAR Provisions

452.204-70 Inquiries (Feb 1988)

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the Contracting Officer issuing the solicitation about any aspect of this requirement prior to contract award.

452.216-72 Evaluation Quantities—Indefinite Delivery Contract (Feb 1988)

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation, and will add other direct costs if applicable.

(Applicable for indefinite delivery contracts.)

452.219-70 Size Standard and NAICS Code Information (Jan 2005)

The North American Industrial Classification System Code(s) and business size standard(s) describing the products and/or services to be acquired under this solicitation are listed below:

Commodity (USDA Commodity Requirement)	NAICS Code	Small Business Size Standard
All Purpose Wheat Flour/Bread Flour (WFBF) Bakery Flour Products (BF) Barley (BAR) Buckwheat Products (BWP) Bulgur Wheat/Soy - Fortified Bulgur (BWSF) Corn Products (CP) Cornmeal (CM) Corn-Soy Blend (CSB) Corn-Soy Milk (CSM) Instant Corn-Soy Milk (ICSM) Inst. Corn-Soya Masa Flour (MF) Soy-Fortified Cornmeal (SFCM) Soy-Fortified Sorghum Grits (SFSG) Wheat Flour (WF) Wheat Soy Blend (WSB) Wheat Soy Milk (WSM)	311211	500
Milled Rice (bagged) (MR) Milled Rice (Bulk) (KCPG) Rice Products (RP)	311212	500
Crude or Refined Corn Oil (BOT)	311221	750
Crude Degummed Soybean Oil (BOT) Soybean Meal (Bulk) (KCPG) Value Added Soy Products (VASP) Vegetable Oil Products (VP)	311222	500
Crude Sunflower Seed Oil (BOT) Sunflower Seed Butter (SSB) Sunflower Seed Oil (SFSSO)	311223	1,000
Corn Oil (CO) Bulk Refined Soybean Oil (BOT) Vegetable Oil (VO)	311225	1,000
Fortified R-T-E Cereals (FC) Instant Rice Baby Cereal (RC) Processed Cereal Products (PC)	311230	1,000
Dehydrated Potato Products (DPP) Dehydrated Soup Mix (DSM)	311423	500
Packaged Butter (PBD)	311512	500
Cheese (Bulk) (BCD) Cheese (Processed) (PCD) Mozzarella Cheese (MCD) Queso Blanco Cheese (QBD)	311513	500
Evaporated Milk (EVD) Infant Formula (IFD) Instant Nonfat Dry Milk (IMD) Nonfortified Nonfat Dry Milk (DMD) Ultra High Temperature Milk (UHD)	311514	500
Tallow (BOT)	311613	500
Canned Salmon (CPS)	311711	500
Crackers (Saltine) (CR)	311821	750
Bakery Mix (BFM)	311822	500
Macaroni and Cheese (Dry) (MC) Pasta Products (PA)	311823	500

Peanut Products	(PP)	311911	500
Vegetable Oil Products	(VP)	311941	500
Bags	(KCP BAGS)	314911	500
Twine	(KCP BAGS)	314991	500
Needles	(KCP BAGS)	424310	500
Bagged Grain	(KCBG)		
Dry Edible Beans	(DEB)	424510	500
Grain (Bulk)	(KCPG)		
Peas & Lentils	(PL)	424590	500

The small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

452.228-70 Alternative Forms of Security (Nov 1996)

If furnished as security, money orders, drafts, cashiers checks, or certified checks shall be drawn payable to: USDA/CCC

(Applicable for contracts that require a performance bond.)

Part 3 Contract Clauses

Section A KCCO Clauses

1. Definitions

The following definitions are incorporated into the contract.

- (a) “Commodity Credit Corporation (CCC)” means a wholly-owned government corporation within the U.S. Department of Agriculture (USDA).
- (b) “CCC List of Approved Warehouses” means a list of grain warehouses approved under the Uniform Grain and Rice Storage Agreement (UGRSA).
- (c) “F.a.s. vessel” means free of expense to the Government delivered alongside the ocean vessel and within reach of its loading tackle at the specified port of shipment, or to the USDA -approved warehouse/berth/terminal transload facility as designated by ocean carrier.

Exception: The following f.a.s. delivery points shall be defined as free of expense to the Government delivered free on board the conveyance (truck or railcar) to the USDA -approved warehouse/berth/terminal transload facility as designated by ocean carrier:

f.a.s. Houston, TX (HOUS)

(The ocean carrier shall be responsible to pay all handling costs to unload the conveyance and all associated terminal/port charges.)

- (d) “FGIS” means Federal Grain Inspection Service of the USDA which, provides inspection, weighing, and related services on grains, pulses, oilseeds, and processed and graded commodities.
- (e) “F.o.b. vessel” means:
 - (i) for dry bulk cargoes, delivered free of expense to the Government loaded, unstowed and untrimmed, on board the designated conveyance at the USDA-approved port facility specified in the contract.
 - (ii) for liquid bulk cargoes, delivered free of expense to the Government on board the ocean vessel provided by USDA at the named port of shipment specified in the contract.
- (f) “Grain Acquisition Report and Invoice for Related Charges,” Form KC-228 means a form that is issued by a warehouse operator to CCC in lieu of or in addition to a warehouse receipt.
- (g) “Intermodal plant” means delivered free of expense to the Government loaded on board the transportation conveyance obtained by the vendor at locations where steamship lines have established and published intermodal rates from vendor plant to foreign destination.
- (h) “Intermodal bridge” means delivered free of expense to the Government delivered in transportation conveyance obtained by the vendor to locations where steamship lines have established and published intermodal rates from a U.S. point to a U.S. port and a foreign destination.
- (i) “Intermodal bridge-port for the Great Lakes” means delivered free of expense to the Government delivered in transportation conveyance obtained by the vendor to marine cargo-handling facilities capable of loading ocean-going vessels at a Great Lakes port, as well as loading ocean-going conveyances such as barges and container vans.
- (j) “Instore” means within a USDA-approved warehouse.
- (k) “Lowest-landed cost,” means the lowest combined cost of commodity and ocean freight to deliver a commodity to an overseas destination while adhering to cargo preference statutes and regulations.
- (l) “Notice to Deliver,” Form KC-269, means the contracted shipping or delivery instructions issued by the Government and mailed to the contractor.
- (m) “Shipment Information Log,” Form KC-366, means the accounting of the contracted shipping or delivery of commodities for overages, shortages and/or damage.
- (n) “Uniform Grain and Rice Storage Agreement (UGRSA)” means a contract for the storage and handling of CCC-interest grain between the CCC and the warehouse.

2. Invoice Requirements

Only whole pounds should be shown on the invoice. 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.

- (a) For f.o.b. destination shipments
The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse side of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:
 - (i) Name and address of the contractor;
 - (ii) Invoice date and number;
 - (iii) Contract number and Notice to Deliver (N/D) number;
 - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (v) Terms of any discount for prompt payment offered;
 - (vi) Commercial bill of lading and must include the contractor's lot code/lot identification number;
 - (vii) For bulk shipments, weight certificates;
 - (viii) For rice products, FGIS Official (Original) Commodity Inspection Certificate and a statement from the contractor certifying that the rice was fumigated;
 - (ix) For dairy products that use AMS quality assurance inspection program, AMS Commodity Inspection Certificate or Cheese Graders Memorandum, and Certificate of Analysis (COA). For dairy products that use the Government's TQSA quality assurance program, the contractor's commodity inspection certificate and COA. If product delivered falls within the quality discount table as outlined in the commodity specifications, those factors shall be identified by an asterisk on the copies of the COA;
 - (x) A signed and dated "Contractor's Invoice Certification" evidencing the date of delivery and quantity (units) delivered in good condition.
 - (A) This can be either the Form KC-269 (reverse side), or
 - (B) A signed and dated commercial invoice evidencing the date of delivery and quantity (units) delivered in good condition which must include the following statement (either as a part of the commercial invoice or an attachment to):

"Contractor's Invoice Certification"
"I certify that this invoice presented for payment is true. This certification is executed with full knowledge of the provisions of 31 U.S.C. 3729, or 15 U.S.C. 714m(a), if applicable, imposing civil liability upon any person who shall make or cause to be made a false, fictitious, or fraudulent claim against the United States."

Authorized Signature

Date

- (C) Proof of delivery as evidenced by either a copy of the Bill of Lading or a commercial receipt signed and dated by the consignee, if the contractor does not complete a “Contractor’s Invoice Certification.
- (b) For f.a.s. vessel, intermodal plant, intermodal bridge, and intermodal bridge-port point for the Great Lakes shipments
The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:
- (i) Name and address of the contractor;
 - (ii) Invoice date and number;
 - (iii) Contract number and Notice to Deliver (N/D) number;
 - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (v) Terms of any discount for prompt payment offered;
 - (vi) Commercial Bill of Lading;
 - (vii) Copy of FGIS Official (original) inspection certificates, if required;
 - (viii) Statement from the contractor certifying fumigation of product, if required;
 - (ix) Copies of Certificate of Analysis (COA), if required. If product delivered falls within the quality discount table as outlined in the commodity specifications, those factors must be identified by an asterisk on the copies of the COA;
 - (x) Proof of delivery as evidenced by either a copy of the Bill of Lading or a commercial receipt signed and dated by the consignee.
- (c) For f.o.b. vessel shipments-dry bulk cargoes
The contractor shall submit an original invoice and one copy to the address designated on the contract to receive invoices. An invoice must include:
- (i) Name and address of the contractor;
 - (ii) Invoice date and number;
 - (iii) Contract number;
 - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (v) Terms of any discount for prompt payment offered;
 - (vi) Copy of signed and dated on board Ocean Bill of Lading or copy of Mate’s Receipt (vessel under and over fills in excess of 5% to be settled in cash at market value determined by the Government on the day following the Bill of Lading date);
 - (vii) FGIS Official (original) Export Weight and FGIS Official (original) Clear White Grade Inspection Certificates;
 - (viii) FGIS Protein Certificate, if protein analysis is required;
 - (ix) FGIS Aflatoxin Certificate, if aflatoxin testing is required;
 - (x) FGIS Vomitoxin Certificate, if vomitoxin testing is required;
 - (xi) FGIS or commercial private laboratory certificate for falling number, if falling number analysis is required; and

(xii) If fumigation is required, a fumigation certificate issued by the fumigator and a signed statement on FGIS letterhead attesting that the fumigation was witnessed by a FGIS representative.

(d) For f.o.b. vessel shipments - bulk oils and tallow

The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse side of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:

- (i) Name and address of the contractor;
- (ii) Invoice date and number;
- (iii) Contract number and Notice to Deliver (N/D) number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Terms of any discount for prompt payment offered;
- (vi) Copy of signed and dated on board Ocean Bill of Lading or Mate's Receipt;
- (vii) Chemical analysis certificate issued by a National Oilseed Processors Association or American Fats and Oils Association, Inc. – approved commercial chemist on the chemist's letterhead, which includes the following certification:
“The undersigned hereby certifies that the chemical analysis certificate was issued as a result of the analysis of samples taken by an independent surveyor, and that such chemical analysis was performed in accordance with methods prescribed in the Trading Rules of the National Oilseed Processors Association or American Fats and Oils Association, Inc.”, as applicable;
- (viii) The chemical analysis certificate must state that the bulk oil/tallow met the analytical requirements of the specifications as provided in the contract;
- (ix) A sampling certificate which includes a statement that the samples were drawn in accordance with American Oil Chemists Society Method C 1-47;
- (x) Survey report of the independent surveyor which must include the weight of the bulk oil/tallow delivered and a certification that the ship's tanks were examined and found suitable for receipt and carriage of the bulk oil/tallow.

(e) For f.a.s. vessel - seeds shipments

The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse side of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:

- (i) Name and address of the contractor;
- (ii) Invoice date and number;
- (iii) Contract number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Terms of any discount for prompt payment offered;
- (vi) Copy of signed and dated dock receipt;
- (vii) Germination Analysis Certificate;
- (viii) Consular invoice and other named documents required by the country of destination regulations; and
- (ix) Certified Seed Certificate.

- (f) For f.a.s. vessel - bags and twine shipments
The contractor shall submit an original invoice and one copy to the address designated on the contract to receive invoices. An invoice must include:
- (i) Name and address of the contractor;
 - (ii) Invoice date and number;
 - (iii) Contract number;
 - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (v) Terms of any discount for prompt payment offered;
 - (vi) Commercial Bill of Lading; and
 - (vii) Proof of delivery as evidenced by either a copy of the Bill of Lading or commercial receipt signed and dated by the consignee.
- (g) For Instore delivery
The contractor shall submit an original invoice and one copy to the address designated on the contract to receive invoices. An invoice must include:
- (i) Name and address of the contractor;
 - (ii) Invoice date and number;
 - (iii) Contract number;
 - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (v) Terms of any discount for prompt payment offered; and
 - (vi) Form KC-228 or negotiable warehouse receipts.

3. Regulatory Requirements

The commodity shall conform to the applicable provisions of the "Federal Food, Drug, and Cosmetic Act" (21 U.S.C. 301 et. seq.), as amended, and the relevant regulations. The contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations related to its performance under this contract.

4. Order of Precedence

Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Invitation for Bids
- (b) Solicitation provisions
- (c) Contract clauses
- (d) USDA Commodity Requirements
- (e) TQSA Suppliers Guidelines
- (f) Other documents, exhibits, and attachments

5. Time is of the Essence

Time is of the essence in the performance of this contract. Performance shall be strictly in accordance with the applicable quantities and schedules set forth in this contract. Whenever it appears the contractor will not meet the performance schedule, the

contractor shall immediately notify the Government of the reason and length of the delay. The contractor shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. Any additional cost caused by these requirements shall be borne by the contractor. If the contractor is unable to meet the required performance schedules for any reason, other than a change directed by the Government, the Government shall have the option to cancel this contract, or fill such contract or any portion thereof, from sources other than the contractor and to reduce the contractor's contract quantities accordingly at no increase in unit price, without any penalty to the Government. This condition shall not limit the Government's rights under the default provision contained herein.

6. Carrying Charges

For f.o.b. vessel contracts only (excludes bulk oils and tallow), if the Government fails to take delivery by the end of the delivery period for reasons beyond the control of the contractor, the Government will pay carrying charges at the rate of 18 cents per metric ton per day beginning on the day following the end of the delivery period and continuing through the date the vessel presents the notice of readiness. For the purpose of carrying charges, a vessel must have passed all required inspections and be ready to receive grain in the compartments required for loading and a valid Notice of Readiness (NOR) must be presented during normal business hours of 0900 to 1600 local time, Monday through Friday and on Saturday between 0900 to 1200 noon (provided it is not a holiday). If the NOR is filed after business hours, the NOR will be considered presented on the next business day.

For f.o.b. vessel contracts for bulk oil and tallow, if the Government fails to take delivery by the end of the delivery period for reasons beyond the control of the contractor, the Government will pay to the contractor a premium based on the actual (noncumulative) number of days by which the delivery period is exceeded through the date the vessel presents the notice of readiness as follows:

- (1) If exceeded by 1, 2, 3, or 4 days, $\frac{1}{2}$ of 1 percent of the f.o.b. price;
- (2) If exceeded by 5 or 6 days, 1 percent of the f.o.b. price;
- (3) If exceeded by 7 or 8 days, $1\frac{1}{2}$ percent of the f.o.b. price;
- (4) If exceeded by more than 8 days, an additional premium of $\frac{1}{4}$ of 1 percent of the f.o.b. price for each day beyond 8 days.

If the f.o.b. vessel contract contains multiple prices, the premium shall be calculated on the weighted average of the contract prices.

7. Domestic Origin

The end product delivered must be entirely produced in the United States from commodities and packaging produced in the United States. Produced in the United States means manufactured, processed, mined, harvested, or otherwise prepared for sale or distribution, from components originating in the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as the United States). Components originating in the United States that have been exported, and subsequently imported back into the United States, will not be considered as having been produced in the United States. The contractor will maintain records evidencing product origin and will make such records available for review by the Government. The domestic origin requirement for Vitamin A

(Retinol Palmitate) and Vitamin D used to fortify commodities is waived as these vitamins are not entirely produced from domestic origin ingredients.

8. Shipment and Delivery

(a) For Domestic Programs:

- (i) The State Agency, "Consign To" party shown on the KC-269, Notice to Deliver (N/D) shall be faxed on the date of shipment.
- (ii) The receiving warehouse, "Care Of" party shown on the N/D, shall be called 24 hours in advance to schedule an unloading appointment. This is not required for rail shipments. Contractors shall notify the contracting officer in advance if deliveries will not be made by final delivery date under the contract.

(b) For Export Programs - Packaged Commodities:

- (i) The Notify Party shown on the KC-269, Notice to Deliver (N/D), shall be contacted prior to shipment.
- (ii) The contractor shall submit form KC-366, Shipment Information Log, for each N/D, annotating on the form when the shipment is complete for each N/D. The form is available at <http://www.fsa.usda.gov/daco/Forms/kc366.pdf>. The KC-366 is to be faxed as early as possible each Tuesday and Thursday, until shipping is complete, to both Export Operations Division, KCCO (facsimile number 816-926-6767) and the Notify Party(s) on the N/D. Contractors shall notify the contracting officer in advance if shipments will not be made by the final shipment date under the contract.

9. Seals on Transportation Conveyances

Suppliers of commodities, products and/or services shall be responsible for placing a seal(s) on all doors of each transportation conveyance upon completion of loading or servicing. The seal number(s) shall be entered on the bill of lading, which must be signed or acknowledged by the carrier or its agent. Seals shall be sequentially numbered, barrier-type and meet the American Society for Testing and Materials (ASTM) Standards. Seals shall be 1/8-inch diameter cable, high security bolt, or equivalent. Information on ASTM Standards may be found at <http://www.astm.org>.

10. Miscellaneous Contract Requirements for F.o.b. Vessel Delivery

- (a) The Government will furnish the contractor at least ten (10) days advance notice of vessel readiness.
- (b) Contractor must forward original Mate's Receipt to the Government's representative within 48 hours after completion of vessel loading.
- (c) If multiple contracts are awarded on an IFB to the same contractor who has designated the same loading berth, the contractor shall complete loading in one continuous berthing. If the contractor elects not to complete loading in one continuous berthing, the contractor will be liable for any charges associated with shifting and reberthing as provided in the Charter Party.
- (d) Contractor agrees to load the Government's nominated vessels in rotation with all vessels for loading at the elevator based on when vessels file and are accepted as ready-to-load in all respects. In the event that the contractor, for its own

convenience, elects to by-pass the Government's nominated vessels to load a vessel which filed and was accepted later than the Government's nominated vessel, such action will be construed as failure or refusal of the contractor to perform.

- (e) Contractor will be liable to the Government for any actual damages suffered by the Government resulting from failure or refusal of the contractor to perform, which is not excusable under the Excusable Delay clause. Such actual damages may include, but are not limited to, the cost of demurrage, inter-port vessel relocation, vessel discharge costs, reprocurement costs, and claims by carriers for damages resulting from delays in loading resulting from the commodity not being available for loading, or for delays or slowness of the vessel loading.

11. Contractor Expenses

Unless stipulated otherwise in the IFB, all expenses incurred including but not limited to testing, analysis, fumigation, and certification requirements shall be the responsibility of the contractor.

Section B FAR Clauses

52.202-1 Definitions (Jul 2004)

52.203-3 Gratuities (Apr 1984)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-5 Covenant Against Contingent Fees (Apr 1984)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-6 Restrictions on Subcontractor Sales to the Government (Jul 1995)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-7 Anti-Kickback Procedures (Jul 1995)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Jun 2003)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.204-7 Central Contractor Registration (Oct 2003)

52.209-1 Qualification Requirements (Feb 1995)

Government contact for information on the standards for qualification: Kansas City Commodity Office at <http://www.fsa.usda.gov/daco/qualifications.htm>.

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Jan 2005)
(Applicable for contracts exceeding \$25,000.)

52.211-5 Material Requirements (August 2000)

52.211-11 Liquidated Damages- Supplies, Services, or Research and Development (Sep 2000)

NOTE: Liquidated damages are based upon delivery periods for f.o.b. destination contracts, f.o.b. vessel contracts, and f.a.s. vessel contracts for bags, needles and twine; and shipping periods for all others.

- (a) If the contractor fails to ship/deliver the supplies or perform the services within the time specified in this contract, the contractor shall, in place of actual damages, pay to the Government liquidated damages in accordance with the table below, not to exceed 45 days of delay.

Commodity (USDA Commodity Requirement) http://www.fsa.usda.gov/daco/commrequirements.htm	Rate	Per Net Weight
All Purpose Wheat Flour/Bread Flour (WFBF)	\$ 0.10	Cwt/day
Bagged Grain (KCBG)		
Barley (BAR)		
Buckwheat Products (BWP)		
Bulgur Wheat/Soy - Fortified Bulgur (BWSF)		
Canned Salmon (CPS)		
Corn Oil (CO)		
Cornmeal (CM)		
Corn-Soy Blend (CSB)		
Corn-Soy Milk (CSM)		
Instant Corn-Soy Milk (ICSM)		
Crude Degummed Soybean Oil (BOT)		
Crude or Refined Corn Oil (BOT)		
Crude Sunflower Seed Oil (BOT)		
Dehydrated Potato Products (DPP)		
Dry Edible Beans (DEB)		
Inst. Corn-Soya Masa Flour (MF)		
Milled Rice (bagged) (MR)		
Peas & Lentils (SFCM)		
Soy-Fortified Cornmeal (PL)		
Soy-Fortified Sorghum Grits (SFSG)		
Sunflower Seed Oil (SFSO)		
Tallow (BOT)		
Value Added Soy Products (VASP)		
Vegetable Oil (VO)		
Wheat Soy Blend (WSB)		
Wheat Soy Milk (WSM)		
Bakery Flour Products (BF)	\$ 0.15	Cwt/day

Bakery Mix Products	(BFM)		
Corn Products	(CP)		
Wheat Flour	(WF)		
Rice Products	(RP)	\$ 0.20	Cwt/day
Crackers (Saltine)	(CR)		
Instant Rice Baby Cereal	(RC)	\$ 0.30	Cwt/day
Pasta Products	(PA)		
Processed Cereal Products	(PC)		
Vegetable Oil Products	(VP)	\$ 0.35	Cwt/day
Cheese (Bulk)	(BCD)		
Cheese (Processed)	(PCD)		
Evaporated Milk	(EVD)		
Fortified R-T-E Cereals	(FC)		
Infant Formula	(IFD)		
Instant Nonfat Dry Milk	(IMD)		
Mozzarella Cheese	(MCD)	\$ 0.45	Cwt/day
Macaroni and Cheese (Dry)	(MC)		
Nonfortified Nonfat Dry Milk	(DMD)		
Packaged Butter	(PBD)		
Peanut Products	(PP)		
Queso Blanco Cheese	(QBD)		
Sunflower Seed Butter	(SSB)		
Ultra High Temperature Milk	(UHD)		
Twine	(KCP BAGS)	\$2.50	Carton/day
Bags	(KCP BAGS)	\$25.00	1,000 bags/day

- (b) If the Government terminates this contract in whole or in part under the Default—Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains shipment/delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.
- (c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

52.211-16 Variation in Quantity (Apr 1984)

- (b) The permissible variation shall be limited to:
five percent decrease
This decrease shall apply to the total contract quantity.

52.214-26 Audit and Records—Sealed Bidding (Oct 1997)

(Applicable for contracts exceeding \$550,000.)

52.214-27 Price Reduction for Defective Cost or Pricing Data-Modifications- Sealed Bidding (Oct 1997)

(Applicable for contracts exceeding \$550,000.)

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Oct 1997)

(Applicable for contracts exceeding \$550,000.)

- 52.219-3 Notice of Total HUBZone Set-Aside (Jan 1999)**
(Applicable when the IFB stipulates the procurement is a total HUBZone set-aside.)
- 52.219-6 Notice of Total Small Business Set-Aside (Jun 2003)**
(Applicable when the IFB stipulates the procurement is a total small business set-aside.)
- 52.219-7 Notice of Partial Small Business Set-Aside (Jun 2003)**
(Applicable when the IFB stipulates the procurement is a partial small business set-aside.)
- 52.219-8 Utilization of Small Business Concerns (May 2004)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)
- 52.219-9 Small Business Subcontracting Plan (July 2005) Alternate 1 (Oct 2001)**
(Applicable for contracts exceeding \$500,000.)
- 52.219-14 Limitations on Subcontracting (Dec 1996)**
(Applicable to any portion of the requirement that is set aside for small business and the contract amount is expected to exceed \$100,000; and is applicable to all contracts awarded under the 8(a) program.)
- 52.219-16 Liquidated Damages- Subcontracting Plan (Jan 1999)**
- 52.222-1 Notice to the Government of Labor Disputes (Feb 1997)**
- 52.222-3 Convict Labor (Jun 2003)**
(Applicable for contracts exceeding \$2,500.)
- 52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (Sep 2000)**
(Applicable for contracts exceeding \$100,000.)
- 52.222-21 Prohibition of Segregated Facilities (Feb 1999)**
- 52.222-26 Equal Opportunity (Apr 2002)**
- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)**
(Applicable for contracts exceeding \$25,000.)
- 52.222-36 Affirmative Action for Workers with Disabilities (Jun 1998)**
(Applicable for contracts exceeding \$10,000.)

- 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)**
- 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)**
(Applicable for all contracts expected to exceed the Simplified Acquisition Threshold of \$100,000.)
- 52.223-6 Drug-Free Workplace (May 2001)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000 and to all contracts awarded to an individual.)
- 52.223-14 Toxic Chemical Release Reporting (Aug 2003)**
See EPA's web site at <http://www.epa.gov/tri> for guidance.
(Applicable for contracts exceeding \$100,000.)
- 52.225-13 Restrictions on Certain Foreign Purchases (Mar 2005)**
(Applicable for contracts exceeding \$2,500.)
- 52.228-2 Additional Bond Security (Oct 1997)**
(Applicable for contracts that require a performance bond.)
- 52.228-11 Pledge of Assets (Feb 1992)**
(Applicable for contracts that require a performance bond.)
- 52.228-14 Irrevocable Letter of Credit (Dec 1999)**
(Applicable for contracts that require a performance bond.)
- 52.229-3 Federal, State, and Local Taxes (Apr 2003)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)
- 52.232-1 Payments (Apr 1984)**
(As used in this clause, "partial deliveries" means "Notices to Deliver"-see definitions.)
- 52.232-8 Discounts for Prompt Payment (Feb 2002)**
- 52.232-11 Extras (Apr 1984)**
- 52.232-17 Interest (June 1996)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)
- 52.232-23 Assignment of Claims (Jan 1986)**

USDA forms CCC-251 (Notice of Assignment) and CCC-252 (Instrument of Assignment) may be obtained at:
<http://www.fsa.usda.gov/daco/procure.htm#Forms>

or the contractor may use its own forms provided the forms are essentially consistent with CCC-251 and CCC-252 in content.

- 52.232-25 Prompt Payment (Oct 2003)**
- 52.232-33 Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003)**
- 52.233-1 Disputes (Jul 2002)**
- 52.233-3 Protest after Award (Aug 1996)**
- 52.233-4 Applicable Law for Breach of Contract Claim (Oct 2004)**
- 52.242-13 Bankruptcy (Jul 1995)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)
- 52.242-15 Stop-Work Order (Aug 1989)**
- 52.242-17 Government Delay of Work (Apr 1984)**
- 52.243-1 Changes-Fixed Price (Aug 1987)**
- 52.244-6 Subcontracts for Commercial Items (Dec 2004)**
- 52.245-2 Government Property (Fixed-Price Contracts) (May 2004)**
(Applicable for any contract where Government property is furnished.)
- 52.246-2 Inspection of Supplies- Fixed-Price (Aug 1996)**
- 52.247-34 F.o.b. Destination (Nov 1991)**
- 52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments (Apr 1984)**
- 52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form) (Apr 1984)**
(Applicable for contracts of \$100,000 or less.)
- 52.249-2 Termination for Convenience of the Government (Fixed-Price) (May 2004)**
(Applicable for contracts exceeding \$100,000.)
- 52.249-8 Default (Fixed-Price Supply and Service) (Apr 1984)**
- 52.252-2 Clauses Incorporated by Reference (Feb 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer

will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://www.acqnet.gov/far/>

<http://www.usda.gov/procurement/policy/agar.html>

(End of clause)

52.252-4 Alterations in Contract (Apr 1984)

Portions of this contract are altered as follows:

52.246-16 Responsibility for Supplies (Apr 1984)

- (b)(3) Delivery of the supplies when placed alongside ocean vessel and within reach of its loading tackle or to the USDA-approved warehouse/berth/terminal/transload facility as designated by the ocean carrier, if transportation is f.a.s. vessel;

Exception: For those f.a.s. vessel destinations excepted in subsection 3.A.1.(c) delivery of the supplies free on board the conveyance (truck or railcar) at the USDA-approved warehouse/berth/terminal/transload facility as designated by the ocean carrier.

- (4) Delivery of the supplies on board the ocean vessel at the named port of shipment specified in the contract, if transportation is f.o.b. vessel;
- (5) Delivery of the supplies when placed on board the conveyance at named point of origin, if transportation is Intermodal Plant;
- (6) Delivery of the supplies to the carrier on rail cars, trucks, or carrier-supplied conveyance at the named bridge point, if transportation is Intermodal Bridge;
- (7) Delivery of the supplies to the carrier on rail cars, trucks, or carrier-supplied conveyance at the named Great Lakes bridge-port point, if transportation is Intermodal Bridge-Port for the Great Lakes.
- (8) Receipt by the Government of a warehouse receipt or a certified Form KC-228 covering supplies being delivered, if delivered Instore.

(End of clause)

52.253-1 Computer Generated Forms (Jan 1991)

Section C AGAR Clauses

452.211-74 Period of Performance (Feb 1988)

The period of performance of this contract is stipulated in the IFB.

452.216-73 Minimum and Maximum Contract Amounts (Feb 1988)

During the period specified in FAR clause 52.216-18, Ordering, the Government shall place orders totaling a minimum of the minimum quantity awarded, but not in excess of the maximum quantity awarded.

(Applicable for indefinite delivery contracts.)

452.247-70 Delivery Location (Feb 1988)

Shipment of deliverable items, other than reports, shall be to:
see Schedule of Supplies.

(Applicable for all contracts except those for commodities destined for export programs.)