



**United States
Department of
Agriculture**

Agricultural
Stabilization and
Conservation
Service

Agricultural
Marketing
Service

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General Terms and Conditions

For the Procurement of Agricultural Commodities or Services

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UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service
Agricultural Marketing Service
Washington, DC 20250

GENERAL TERMS AND CONDITIONS

FOR THE PROCUREMENT OF AGRICULTURAL COMMODITIES OR SERVICES

This document contains information, representations and requirements relating to the submission and acceptance of offers made pursuant to announcements or invitations for offers which specifically incorporate this document, in whole or in part, by reference, and which are issued by the United States Department of Agriculture or Commodity Credit Corporation. Each such announcement will specify terms and conditions, in addition to those included in this document, which are applicable. References in this document to a particular regulation, or other document, shall be deemed to refer to such document as it may be revised or amended and any superseding document as of the time offers are invited.

PART A - INFORMATION FOR OFFERORS

Article 1. DESCRIPTIVE HEADINGS

The descriptive headings of the various contract terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

Article 2. DEFINITIONS

The definitions given for the following words and phrases shall apply whenever these words and phrases are used in this document and any other document which becomes a part of a contract in which any of the provisions of this document are incorporated, unless otherwise specified in the contract:

- (a) "Advertised," for purposes of the solicitation, means small business restricted advertising and other types of restricted advertising.
- (b) "Agency" means the United States Department of Agriculture (USDA) or Commodity Credit Corporation (CCC), whichever is designated in the announcement as procuring the commodity or service.
- (c) "Agency head" or "Secretary" means the Secretary of Agriculture, Chairman of the Commodity Credit Corporation, or a representative thereof unless otherwise specified.

- (d) "Agricultural commodity" means a raw agricultural commodity or a product thereof.
- (e) "AMS" means the Agricultural Marketing Service of USDA.
- (f) "Announcement" means an instrument which states terms and conditions for the procurement of the designated commodity or service. It may in itself invite offers for the commodity or service in which case it will be called "Announcement/Invitation." In other instances, it may provide for the issuance of a separate notice requesting bids and may set forth other special terms. Such separate notice will be called an "Invitation" or "Solicitation." * For purposes of brevity, the term announcement as used throughout this document applies to all variations.
- (g) "Article" means one of the Articles of this document.
- (h) "ASCS" means the Agricultural Stabilization and Conservation Service of USDA.
- (i) "Business day" means a day of the week, excluding Saturday, Sunday, and Federal holidays. Unless otherwise specified, any other reference to days is on a calendar basis.
- (j) "Causes" as used in the phrases "causes beyond the control and without the fault or negligence" means, but is not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; however, in every case the failure to perform must be beyond the control and without the fault or negligence of the party to the contract seeking excuse from liability.
- (k) "The commodity" means the agricultural commodity delivered or to be delivered to Agency by Contractor or the serviced commodity produced or to be produced by Contractor from the agricultural commodity delivered by Agency to Contractor.
- (l) "Commodity Office" means the Kansas City Commodity Office, ASCS or such other office as may be specified in the announcement.
- (m) "CCC" means Commodity Credit Corporation, a wholly owned corporation of the United States within USDA.
- (n) "Contract" means the Contractor's offer, Agency's acceptance, this document, the applicable announcement and other documents incorporated by reference.

- (o) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings on behalf of Agency.
- (p) "Contractor" means the person, firm, corporation or other legal entity obligated under the contract with Agency.
- (q) "Management Office" means the Kansas City Management Office, ASCS or such other office as may be specified in the announcement.
- (r) "Offer" means the bid in formal advertising.
- (s) "Offeror" means the person, firm, corporation or other legal entity submitting an offer in response to an announcement.
- (t) "Service" means to process, package, and perform other acts under a contract with respect to commodities owned by Agency.
- (u) "Shipment" means transfer in store where the shipping instructions so provide.

Article 3. EXPLANATION TO PROSPECTIVE OFFERORS

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective offerors. Addresses and telephone numbers of offices to contact will be listed in the applicable announcement.

Inquiries concerning:

Shipping information shall be made to:

Director, Kansas City Commodity Office, ASCS
U. S. Department of Agriculture
P.O. Box 205
Kansas City, MO 64141

Payments shall be made to:

Director, Kansas City Management Office, ASCS
U.S. Department of Agriculture
P.O. Box 205
Kansas City, MO 64141

Article 4.

PREPARATION OF OFFERS

(a) Offeror is cautioned to read this document and the applicable announcement carefully and to verify prices before submitting offers. Offerors must make their own estimates of the facilities and difficulties attending the performance of the proposed contract, including local conditions, uncertainty of weather, financial considerations, availability of materials and containers, and all other contingencies.

(b) Offeror shall acknowledge receipt of any amendment to the solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, or (3) by letter or telegram as specified in the Announcement. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(c) Offeror must provide full, accurate, and complete information as required by the solicitation and its attachments. The penalty for making false statements in bids is prescribed in 15 U.S.C. 714m(a), 18 U.S.C. 1001, and other applicable statutes.

Article 5.

DISCOUNTS FOR PROMPT PAYMENT

Any discounts offered for prompt payment will not be considered as a factor in evaluating offers. In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the service or delivery of the commodity to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date the Government check was mailed.

Article 6.

SIGNING OF OFFERS

An offer shall set forth the full business name and address of offeror. An offer mailed, telecopied, or hand delivered shall be signed by a person authorized to execute contracts on behalf of offeror. Any offer submitted by telegram, mailgram, telex or TWX must bear the name of such person as well as that of offeror. A power of attorney or other documentary evidence of the authority for a person to execute the contract in the name of offeror may be required by Agency.

Article 7.

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS
OF BIDS

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it--

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th); or

(2) Was sent by mail (or was a telegraphic bid if authorized), and it is determined by the Agency that the late receipt was due solely to mishandling by the Agency after receipt at the Agency installation.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) above.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Agency installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) above, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f) A bid may be withdrawn in person by a offeror or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

Article 8.

CONDITIONAL OFFERS

Any qualification or condition in, or added to, the offer may make it ineligible for consideration.

Article 9

AUTHORIZED DEVIATIONS FROM THE FEDERAL ACQUISITION
REGULATIONS

(a) The use in USDA-1 of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of the word "DEVIATION" after the title of the USDA-1 article.

(b) Article 28 deviates from 48 CFR 52.219-9 to permit the award of a contract prior to the submission of a subcontracting plan in order to recognize the short turnaround time between offer date and award date in commodity contracting.

(c) Article 54 deviates from 48 CFR 52.246-2 to advise the Contractor that it is responsible for inspection costs and that USDA inspectors and graders do not have the authority to amend contracts.

(d) Article 57 deviates from 48 CFR 52.247-48 to clarify the fact that the Contractor is responsible for loading and bracing costs.

(e) Article 64 deviates from 48 CFR 52.247-54 because the regulation does not refer to F.A.S. vessel as a mode of transportation which may be a required form of transportation in USDA contracts and because relying on published tariff rates which are deregulated is impractical. Article 64 (c) deviates from 48 CFR 52.247-54 because the regulation does not allow the Agency to determine the lowest cost price adjustment and does not consider transit credits which may apply.

(f) Article 68 deviates from 48 CFR 52.249-8 because the regulation does not address the issue of liability of damages caused by strikes when the Contractor's plant is on strike at the time the contract offer is submitted and the Contractor's failure to perform is attributed to the strike.

(g) Article 69 deviates from 48 CFR 52.232-23 to inform the Contractor about the various forms and information USDA requires in approving assignments.

(h) Article 70 deviates from 48 CFR 52.232-1 because the regulation fails to account for the interest accrual period for meat and poultry purchases as required by the Prompt Payment Act.

(i) Article 76 deviates from 48 CFR 52.214-26 in that it waives the requirement that a Contractor submit price data information. This waiver is based on the fact that commodity prices are based on competition and/or established market prices.

(j) Article 86 deviates from 48 CFR 47.305-12(a)(2) to clarify the fact that the contractor is responsible for unloading and drayage costs.

(k) The Announcement and/or invitation provisions pertaining to submission of bids with regard to the procurement of agricultural commodities deviate from 48 CFR 52.214-13 in that USDA waives the requirement for a confirmation copy of a telegraphic bid because of the short period of time between the submission of bids and the awarding of contracts.

(l) 48 CFR 52.214-9 does not apply because whenever an offeror submits an offer, the offeror automatically receives invitations for the remainder of the procurement period.

Articles 10-15 [RESERVED]