

Effective: August 17, 2001

UNITED STATES
DEPARTMENT OF
AGRICULTURE

KANSAS CITY
COMMODITY OFFICE
P.O. BOX 419205
KANSAS CITY, MO 64141-6205

ANNOUNCEMENT DSC1
(Supersedes Announcement KC-DS-1)

**Sale of Dairy Products
for Unrestricted Use
on a Competitive Offer Basis**



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United States
Department of
Agriculture

Farm and Foreign
Agricultural
Services

Farm Service
Agency

Kansas City
Commodity Office
P.O. Box 419205
Kansas City,
Missouri
64141-6205

ANNOUNCEMENT DSC1
SALE OF DAIRY PRODUCTS
FOR UNRESTRICTED USE ON A COMPETITIVE OFFER BASIS
(Supersedes Announcement KC-DS-1)

1. GENERAL

A. Invitation for Offers

The Commodity Credit Corporation (CCC) will from time to time issue an invitation for competitive offers under this Announcement for CCC to sell dairy products for unrestricted use, such as butter, cheese and nonfat dry milk. The dairy products will be sold and delivered in-store at the point(s) of storage.

B. Terms and Conditions

The invitation will specify the quality, quantities, location(s), container size, the closing time for receipt of offers, and other provisions applicable to the proposed sale. Offerors are cautioned to read all terms and conditions of this Announcement and the invitation.

C. Offer Form

Appendix 1 to this Announcement is the offer form.

2. ELIGIBILITY OF OFFERORS

To be eligible to submit an offer under this Announcement, the offeror must:

A. Submit a completed "Solicitation Mailing List Application" (Standard Form 129) to the contracting officer prior to a first offer. Offeror must complete all portions of form SF-129, except Item 18, and include the following additional information for:

- (1) Item 8. Identify all affiliates including any parent company. Provide full name and main office address. A "parent" company is one that owns or controls the activities and basic business policies of the bidder. An "affiliate" is defined on the back of the form.
- (2) Items 19 and 20. Must be an officer, owner, or partner of the company.

- B. Resubmit form SF-129 as necessary when the information requires updating.
- C. An offer shall set forth the complete business name and address of offeror. An offer mailed or hand delivered shall be signed by a person authorized to execute contracts on behalf of offeror. CCC may require a power of attorney or other documentary evidence of the authority for a person to execute the contract in the name of offeror.
- D. CCC reserves the right to refuse to consider an offer if CCC does not have adequate information to determine the responsibility of offeror, financially or otherwise, to meet contract obligations contemplated in this Announcement. If a prospective offeror is in doubt as to whether CCC is acquainted with the offeror's financial responsibility, the offeror should either submit a financial statement to the Kansas City Commodity Office (KCCO) before making an offer or communicate with that office to determine whether such a statement is desired. When satisfactory financial responsibility has not been established, CCC also reserves the right to consider an offer only after receipt from offeror of a certified or cashier's check, irrevocable commercial letter of credit, or other security (acceptable to CCC) assuring that if the offer is accepted, the offeror will pay for the product as provided in section 9 of this Announcement. The security for the offer will be returned to an unsuccessful offeror as soon as practicable after the opening of offers, and to a successful offeror after payment for the commodities.

3. SUBMISSION OF OFFERS

A. How to Submit Offers

- (1) Offers must be submitted by regular mail, express mail, or hand delivered. **(The invitation will specify the office to which offers are to be submitted.)** Offers must include a signed original and one copy of the offer form contained in Appendix 1. Reproductions of the offer form are acceptable.
- (2) Envelopes containing the offers are to be sealed and marked with the name and address of the offeror in the upper left corner. Offers submitted by express mail must be sealed inside a second envelope. All envelopes are to have Optional Form OF-17, Offer Label, filled in and attached or must be plainly marked with the following statement: **“DO NOT OPEN UNTIL PRESCRIBED TIME UNDER ANNOUNCEMENT DSC1 DAIRY INVITATION (Enter appropriate invitation number).”** If overnight/express service is utilized, this statement must be printed clearly on the outer express envelope, not the mailing label.

- (3) Modifications and withdrawals of offers may be submitted by letter, express mail, facsimile, or hand delivered.
- (4) Modifications and withdrawals of offers may be submitted via facsimile at the offeror's risk. CCC will not be responsible for any failure attributed to the transmission or receipt of facsimile changes including, but not limited to the following:
 - (a) Receipt garbled or incomplete.
 - (b) Availability or condition of the receiving facsimile equipment.
 - (c) Incompatibility between the sending and receiving equipment.
 - (d) Delay in transmission or receipt of price changes.
 - (e) Failure of the bidder to properly identify the information.
 - (f) Illegibility of the information.
 - (g) Security of data.
- (5) Changes by facsimile must contain the required signatures.

B. Where and When to Submit Offers

- (1) Offers, modifications, or withdrawals of offers must be submitted to the Kansas City Commodity Office (KCCO) and received by the date and local time specified in the invitation for receipt of offers. In the event such date falls on a business day when KCCO is officially closed, offers must be received by the specified time on the next succeeding business day.
- (2) If mailed, express mailed, or hand delivered, time of receipt will be the time recorded by the Kansas City Administrative Office (KCAO), mailroom's time stamp.
- (3) If sent by facsimile, time of receipt will be the time recorded by the KCAO Communication Center's equipment.

C. Basis of Offer

- (1) Prices shown in offers must be for the entire quantity of commodity delivered to the Contractor by CCC, in-store, at the point(s) of delivery named in the contract. Items with prepaid loadout handling charges will be identified in the invitation.

- (2) For cheese packed in barrels, the offer price must be made on a standard moisture basis (37.8 - 39.0 percent moisture). The offer price will be adjusted according to the composite percentage of moisture as evidenced by certificates issued by Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service (AMS), and the USDA Moisture Adjustment Cheese Price Chart Formula ($100\% - \% \text{ moisture} \times \text{base price} \div 61$; result is rounded to the nearest fourth digit to the right of the decimal. Fifth digit of 5 or more is rounded up, 4 or less is rounded down. The base price is the offer price.

4. INDEPENDENT PRICE CERTIFICATION

A. In submitting an offer, offeror certifies, and in the case of a joint offer each party thereto certifies as to its own organization, that:

- (1) The prices stated in the offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other offeror or with any competitor;
- (2) Unless otherwise required by law, the prices quoted in the offer have not been knowingly disclosed by offeror and will not knowingly be disclosed by offeror prior to opening of offers by CCC, directly or indirectly, to any other offeror or to any competitor; and
- (3) No attempt has been made or will be made by offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

B. Each person signing the offer thereby certifies that:

The offeror is the person in their organization responsible within that organization for the decision as to the prices being offered and has not participated, and will not participate, in any action contrary to subparagraphs A. (1) through A. (3) of this section, or:

- (1) The offeror is not the person in their organization responsible within that organization for the decision as to prices being offered but has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to subparagraphs A. (1) through A. (3) of this section, and as their agent does hereby so certify; and
- (2) The offeror has not participated, and will not participate, in any action contrary to subparagraphs A. (1) through A. (3) of this section.

- C. An offer will not be considered for acceptance where subparagraphs A. (1), A. (3) or B. of this section have been deleted or modified. Where subparagraph A. (2) of this section has been deleted or modified, the offer will not be considered for acceptance unless offeror furnishes with the offer a signed statement which sets forth in detail the circumstances of the disclosure and the contracting officer determines that such disclosure was not made for the purpose of restricting competition.

5. ACCEPTANCE OF OFFERS

- A. CCC will notify successful offerors on the date specified in the invitation. The date of acceptance by CCC will be the contract date.
- B. In addition to the price, factors considered in accepting offers will include the total cost to the Government and the responsibility of the offeror.
- C. CCC may accept or reject any or all offers, or portions thereof, or waive any informality therein. Failure to accept an offer shall be construed as a rejection.

6. PROVISIONS OF CONTRACT

- A. The contract consists of:
 - (1) Contractor's offer.
 - (2) CCC's acceptance.
 - (3) The applicable invitation.
 - (4) This Announcement, including Appendix 1.
- B. If the provisions of this Announcement and the invitation are not consistent, those of the invitation will prevail.
- C. No interpretation or amendment of this Announcement is valid or enforceable unless such interpretation or amendment is in writing and executed by the contracting officer. No other determination or opinion shall be a contract interpretation even if it came from another USDA official.

7. GRADE

- A. The grade of the product delivered by CCC shall be evidenced by the most recent grading certificate issued by the AMS. A copy of the certificate will be furnished to Contractor if requested in the offer. Products delivered will be conclusively presumed to be of the grade stated in such certificate.
- B. The Contractor may, before payment and transfer of title as provided in paragraphs 9. and 10., request reinspection of any part of the product by AMS or an independent private inspection service, agreeable to both the Contractor and CCC, whose findings as to the grade of the product shall be final and conclusive. Such reinspection shall be for the account of the Contractor unless the reinspected product fails to meet the grade represented by CCC, in which case, the cost of the reinspection shall be for the account of CCC.
- C. If the reinspection, as provided in paragraph B. of this section, shows any part of the product to be below the contract grade stated by CCC, the Contractor may:
 - (1) cancel the contract without liability to either party, or
 - (2) accept the product at the grade determined by the reinspection, at a mutually agreed upon, adjusted price, or
 - (3) subject to paragraph D. of this section, accept other product of a grade equal to the contract grade and in a quantity and at a location as near as practicable to the contract quantity and location offered by CCC, if CCC determines that such other product is available.
- D. If the Contractor elects to accept other product, the price and amount of payment shall be subject to adjustment only for difference in location, quantity and moisture content in case of cheese, as determined by CCC. In the event the contract is terminated or other product is accepted, title and risk of loss will revert to CCC. Storage charges for product not accepted by the Contractor shall be for the account of CCC. In the event other product is accepted, delivery, transfer of title and risk of loss and liability for storage, handling and other warehouse charges with respect to such accepted product shall pass to the Contractor pursuant to a new Notice to Deliver/Forwarding Notice as provided in section 10.

8. QUANTITY

CCC's acceptance of offers shall be on the basis of the entire invitation line item consisting of one or more warehouse lots. The weight of each warehouse lot shall be evidenced by the weight shown on the Notice to Deliver/Forwarding Notice

issued by CCC or by the most recent certificates issued by AMS. If the quantity delivered differs from the quantity contracted for, because the number of containers delivered differs from the number shown on the above documents, payment will be adjusted on the basis of the contract price per pound, and reimbursement to the Contractor in the case of shortage, or payment to CCC in the case of over-delivery, shall be made promptly. Claims for shortages must be supported by document(s) acceptable to CCC.

9. FINANCIAL ARRANGEMENTS

- A. Within 10 business days after the date of the contract, payment for the commodity must be received in the KCCO by one of the following methods:
- (1) Wire transfer of funds from Contractor's bank to the address shown on acceptance wire.
 - (2) Certified check or cashier's check made payable to CCC.
 - (3) Irrevocable commercial letter of credit, acceptable to CCC, upon which CCC will draw drafts in accordance with the terms of the letter of credit as deliveries are made.
- B. If payment has not been made within 10 business days after the date of contract, interest at the rate per annum specified in the monthly sales list in effect at the time the offer is accepted by CCC shall be paid by the Contractor to CCC from the end of such 10 day period to the date payment is received by CCC. Notwithstanding paragraph 10.B., the Contractor shall also be responsible for any storage charges commencing on the sixth business day following the end of such 10-day period.
- C. Notwithstanding paragraph 9. B., at the election of CCC, if the Contractor fails to make arrangements for payment in accordance with this section, all of the Contractor's rights under the contract may be terminated by CCC, and CCC may proceed against the Contractor to recover any damages CCC may have sustained.

10. DELIVER, TRANSFER OF TITLE, AND STORAGE COSTS

- A. CCC will deliver the commodity to the Contractor in-store at the named point(s) of storage in the contract as soon as possible after payment is received by CCC. If financial arrangements are by letter of credit, CCC will issue a Notice to Deliver authorizing the release of the commodity to the Contractor in accordance with the terms of the letter of credit. If financial arrangements are other than a letter of credit, CCC will deliver the commodity in-store to the Contractor by issuing to the warehouseman a

Notice to Deliver authorizing them to release the commodity immediately to the Contractor. The Notice to Deliver will be mailed or transmitted to the warehouseman and the Forwarding Notice will be mailed or transmitted to the Contractor once payment is received. The date the Notice to Deliver is mailed or transmitted shall be the date of issuance.

- B. CCC shall be responsible for any storage charges accruing up to and including the fifth business day following the date of issuance of the Notice to Deliver. Any storage, handling, or other warehouse charges accruing thereafter shall be for the account of the Contractor. Notwithstanding the foregoing, any prepaid warehouse charges, including loading-out charges, on any lot of the commodity delivered to the Contractor shall accrue to the benefit of the Contractor. Title and risk of loss shall pass to the Contractor on the date of load-out by the warehouseman or five business days following the date of issuance of the Notice to Deliver, whichever date is earlier.

11. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit, and shall not extend to any benefits that may accrue from the contract to a member of, or a Delegate to Congress, or a Resident Commissioner in their capacity as a farmer.

12. CONTINGENT FEES

Offeror warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or bona fide established commercial agencies maintained by the offeror for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right to annul the contract without liability or, in its discretion, to require the offeror to pay in addition to the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13. DISPUTES

- A. Any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the contracting officer, who shall reduce his decision to writing and mail or otherwise furnish a copy to the Contractor. The decision of the contracting officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Office a written

appeal addressed to the Board of Contract Appeals, care of the Hearing Clerk, USDA, 1400 Pennsylvania Ave., Stop 0601, SW, Washington, D.C. 20250. The decision of the Board of Contract Appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this paragraph, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision hereunder of a dispute, if performance under the contract has not been completed by the Contractor or terminated by CCC, Contractor shall proceed diligently with performance of the contract and in accordance with the contracting officer's decision.

- B. This "Disputes" section does not preclude consideration of any questions of law in connection with decisions provided for in subparagraph 14.: Provided, that nothing in the contract shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.
- C. If an appeal is filed by Contractor from a final decision of the contracting officer under this Disputes section denying a claim arising under the contract, simple interest in the amount of the claim finally determined owed by CCC shall be payable to Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date Contractor furnishes to the contracting officer his written appeal under this Disputes paragraph, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.
- D. Notwithstanding 13. C., (1) interest shall be applied only from the date payment was due, if such date is later than the filing of an appeal, and (2) interest shall not be paid for any period of time that the Contracting Office determined Contractor has unduly delayed in pursuing remedies before the Board of Contract Appeals or a court of competent jurisdiction.

14. ASSIGNMENTS

This contract, any interest therein, or any rights or claims arising thereunder, shall not be assigned in whole or in part by the Contractor without prior written approval of CCC. Any assignment made without prior written approval of CCC shall be void.

15. INQUIRIES

Inquiries pertaining to this announcement should be directed to:

Kansas City Commodity Office
Dairy and Domestic Operations Division
P.O. Box 419205
Stop 8718
Kansas City, MO 64141-6205
816-926-6050

/s/ Steven P. Miteff for

George W. Aldaya
Director

APPENDIX 1

Sales Offer Form

ANNOUNCEMENT DSC1

Sale of Dairy Products

For Unrestricted Use on Competitive Offer Basis



KC-327-DSC <small>(06-01)</small> SALES OFFER FORM	ANNOUNCEMENT NO. DSC1	INVITATION NO.	COMPANY NAME	PAGE 1
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Subject to the terms and conditions of this invitation and Announcement DSC1, the undersigned offers to purchase the cumulative item quantity of commodity at the prices quoted below.

1. ENTER PRICE IN U.S. DOLLARS PER POUND (EXAMPLE: 1.9730).

ITEM	BID PRICE	ITEM	BID PRICE	ITEM	BID PRICE	ITEM	BID PRICE
001		026		051		076	
002		027		052		077	
003		028		053		078	
004		029		054		079	
005		030		055		080	
006		031		056		081	
007		032		057		082	
008		033		058		083	
009		034		059		084	
010		035		060		085	
011		036		061		086	
012		037		062		087	
013		038		063		088	
014		039		064		089	
015		040		065		090	
016		041		066		091	
017		042		067		092	
018		043		068		093	
019		044		069		094	
020		045		070		095	
021		046		071		096	
022		047		072		097	
023		048		073		098	
024		049		074		099	
025		050		075		100	

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1. ENTER PRICE IN U.S. DOLLARS PER POUND (EXAMPLE: 1.9730).

ITEM	BID PRICE	ITEM	BID PRICE	ITEM	BID PRICE	ITEM	BID PRICE
101		126		151		176	
102		127		152		177	
103		128		153		178	
104		129		154		179	
105		130		155		180	
106		131		156		181	
107		132		157		182	
108		133		158		183	
109		134		159		184	
110		135		160		185	
111		136		161		186	
112		137		162		187	
113		138		163		188	
114		139		164		189	
115		140		165		190	
116		141		166		191	
117		142		167		192	
118		143		168		193	
119		144		169		194	
120		145		170		195	
121		146		171		196	
122		147		172		197	
123		148		173		198	
124		149		174		199	
125		150		175		200	

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2. Price Range: From \$ _____ To \$ _____ (For Administrative Purposes Only)
3. Timely Performance (Check One)
The offeror has has not paid for all products under contracts with CCC that have a payment due date prior to this bid opening.

4. **INDEPENDENT PRICE CERTIFICATION**

Check appropriate certification for either subparagraph 4. B. **OR** 4. B. (1) and (2) of Announcement DSC1.

- B. The offeror is the person in their organization responsible within that organization for the decision as to the prices being offered and has not participated, and will not participate, in any action contrary to subparagraphs A. (1) through A. (3) of Announcement DSC1, **OR**
- (1) The offeror is not the person in their organization responsible within that organization for the decision as to prices being offered but has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to subparagraphs A.(1) through A.(3) of this section, and as their agent does hereby so certify; and
- (2) The offeror has not participated, and will not participate, in any action contrary to subparagraphs A. (1) through A. (3) of Announcement DSC1.

5. Offeror acknowledges receipt of amendments to **invitation (if applicable)** by entering the amendment number and date.

AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

The certifications, warranties, and representations as set forth in this invitation are hereby made.

IN WITNESS WHEREOF, the undersigned has executed this offer this _____ day of _____, 20 ____.

NAME OF FIRM

SIGNATURE

TITLE

Typed Name of the Officer or Employee Responsible for the Offer:

TYPE OF FIRM (Corporation, Partnership, or Sole Proprietorship)

ADDRESS

CITY

STATE

ZIP CODE

E-MAIL ADDRESS

FAX NO.

TELEPHONE NO.

AFTER HOURS CONTACT (Name)

TELEPHONE NO.

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MARKET PRICE ADJUSTMENTS

INSTRUCTIONS: Please type.
 Price changes must indicate an increase or decrease of the original price offered.
REPLACEMENT PRICES ARE NOT ACCEPTABLE AND WILL RESULT IN BOTH THE ORIGINAL OFFER AND THE PRICE MODIFICATION BEING CONSIDERED NONRESPONSIVE.

TO: <p align="center"> USDA-FSA-KCCO Kansas City, MO Attn: DAIRY BID BOX Fax: 816-926-6381 </p>	CCC USE ONLY – Bidder No.
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COMPANY LOCATION

PLEASE ADJUST THE PRICES AS FOLLOWS:

LINE	ITEM NUMBERS	PRICE		VENDOR'S USE ONLY
		INCREASE	DECREASE	Commodity Type
EXAMPLE	001 - 150	0.11		CHEDDAR CHEESE
1				
2				
3				
4				
5				

<i>The certifications, warranties, and representations as set forth in this invitation are hereby made.</i>	SIGNATURE	DATE
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PRIVACY ACT AND PUBLIC BURDEN STATEMENTS

The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the information is 7CFR, Chapter 14. The information will be used to evaluate bids to sell processed commodities. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in nonconsideration. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-XXXX. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. RETURN THIS COMPLETED FORM to USDA-FSA-Kansas City Commodity Office.

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities and activities on the basis or race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.