

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

KANSAS CITY COMMODITY OFFICE  
P. O. BOX 205  
KANSAS CITY, MISSOURI 64141

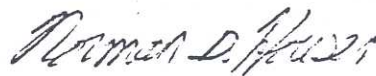
February 10, 1984

TO: The Dairy Industry

Enclosed is Announcement KC-DS-2 for the sale of butter, cheese and nonfat dry milk available under the CCC monthly sales list for unrestricted use at announced prices. This announcement supersedes Announcement PV-DS-2. The reasons for issuing KC-DS-2 are as follows:

1. Update PV-DS-2, and
2. Change the location of the contracting office to the Kansas City Commodity Office.

Although most of the changes and additions are mentioned above, other language changes have been made. We urge you to read the Announcement very carefully.



Norman D. Houser  
Director

ANNOUNCEMENT KC-DS-2  
DATE ISSUED FEBRUARY 10, 1984

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE  
Kansas City Commodity Office  
Post Office Box 205  
Kansas City, Missouri 64141

ANNOUNCEMENT KC-DS-2  
SALE OF DAIRY PRODUCTS FOR UNRESTRICTED USE  
AT ANNOUNCED PRICES  
(Supersedes Announcement PV-DS-2)

I. GENERAL

The Commodity Credit Corporation (hereinafter called "CCC") will sell dairy products, when available, at announced prices for unrestricted use. The dairy products CCC will offer for sale are butter, American-type cheeses (cheese) and nonfat dry milk. These products will be sold and delivered in-store at the point(s) of storage. Offers to buy shall be subject to the prices listed in the CCC Monthly Sales List, and any amendments thereto, for the month in which the offers are received. Offerors are cautioned to carefully read all terms and conditions of this Announcement and the Monthly Sales List.

II. SUBMISSION OF OFFERS

A. How to Submit Offers

Offers shall be submitted by one of the following methods:

1. Letter in duplicate
2. Telegram
3. Mailgram
4. Telex No. 43-4126 or Easylink No. 62140250"
5. TWX No. 910-771-0217 or Easylink No. 62140250+

Letter offers shall be submitted in sealed envelopes marked with the name and address of the offeror in the upper left-hand corner and the notation "Offer under Announcement KC-DS-2" marked in the lower left-hand corner of the envelope. If offers are submitted by wire, Contracting Officer may request confirmation.

B. Where to Submit Offers

1. Offers, modifications or withdrawals of offers shall be submitted to the Kansas City Commodity Office, USDA-ASCS, P. O. Box 205, Kansas City, Missouri 64141.
2. Offers may be withdrawn or modified without any obligation to offeror or to CCC at any time before acceptance by CCC.

C. What to Submit

Offers shall include the following statement and information:

1. Offer is subject to terms and conditions of Announcement KC-DS-2.
2. Name of product.
3. Quantity in pounds.
4. Grade.
5. If a particular lot(s) of dairy product is desired, the identity and location of such lot.

D. Signing of Offers

An offer shall set forth the full 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. Any offer submitted by telegram, mailgram, Telex, TWX or Easylink 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 CCC.

III. RESPONSIBILITY OF OFFEROR

CCC reserves the right to refuse to consider an offer if CCC does not have adequate information to determine 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 his/her financial responsibility, offeror should either submit a financial statement to the Kansas City Commodity Office before making an offer or should 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 Paragraph X. The security for the offer will be returned after he has paid for the product.

#### IV. ACCEPTANCE OF OFFERS

- A. Acceptance of offers will be made by prepaid mailgram, telegram, Telex, TWX, Easylink or mail filed within two business days following date offer is received. CCC reserves the right to accept or reject any or all offers, in whole or in part, and to waive informalities and minor irregularities in offers received. Failure to accept an offer shall be construed as a rejection. Only successful offerors will be notified unless the offer requests notification of rejection by collect telegram. The date of acceptance by CCC shall be the contract date.
- B. "Business day" as used in this Announcement 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.

#### PROVISIONS OF CONTRACT

The contract shall consist of this Announcement, the Contractor's offer and the acceptance by CCC.

#### VI. SALES PRICE

The sales price for each product offered for sale will be stated in the acceptance wire and will be the price listed in the Monthly Sales List in effect at the time the offer is accepted by CCC, basis in-store delivery at storage location(s) of the product. The cheese prices stated in the Monthly Sales List will be adjusted by CCC for moisture content in accordance with the current USDA "Moisture Adjustment Cheese Price Chart" - Form ASCS 150.

#### VII. GRADE

- A. The grade of the product delivered by CCC shall be evidenced by a grading certificate issued by the Dairy Grading Section, Dairy Division, Agricultural Marketing Service, USDA (hereinafter called "AMS"), not more than 180 days before date of the offer unless waived by the offeror. A copy of the certificate will be furnished to offeror if requested in the offer. Products delivered will be conclusively presumed to be of the grade stated in such certificate unless additional inspection is requested as hereinafter provided.

- B. The Contractor may, before payment and transfer of title as provided in Paragraphs X. and XI., request inspection of any part of the product by inspectors licensed by USDA whose findings as to the grade of the product shall be final and conclusive. The cost of the inspection 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. If the inspection shows any part of the product to be below the contract grade, the Contractor may (1) cancel the contract without liability to either party or (2) 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.
- C. 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 of the undelivered product will revert to CCC. Storage charges for products 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 other product, shall pass to the Contractor as provided in Paragraph XI.

#### VIII. QUANTITY

CCC's acceptance of offers to purchase when no particular lot is identified in the offer shall be in multiples of carlot quantities as selected by CCC, as nearly as practicable to the quantity stated in the offer; Provided, That if such quantity exceeds by more than 5 percent the quantity stated in the offer, acceptance of the offer shall be confirmed by the Contractor. Carlot weights shall be evidenced by the most recent certificates evidencing weight issued by USDA. If the quantity delivered differs from the quantity contracted for, because of the number of containers delivered from the number shown on the certificates, 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.

IX. CONTAINERS

CCC will deliver the products packaged in the same containers in which the products were purchased by CCC or in similar containers.

X. FINANCIAL ARRANGEMENTS

- A. Within 10 business days from the date of the contract, payment for the product must be received in the Kansas City Commodity Office by one of the following methods:
1. Wire transfer of funds from Contractor's bank to the Federal Reserve Bank, Kansas City, Missouri. Attention: "CCC Collection Department", identified by contract number.
  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 from the date of the 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 Contractor to CCC from the end of such 10 day period to the date payment is received by CCC. Notwithstanding Paragraph XI. 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 X.B. above, at the election of CCC, if the Contractor fails to make arrangements for payment in accordance with this Paragraph, 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.

XI. SHIPMENT AND DELIVERY -- TRANSFER OF TITLE

- A. Delivery will not be made prior to the Contractor's making of the financial arrangements required by Paragraph X. If financial arrangements are by letter of credit, CCC will issue a Notice to Deliver authorizing release of the product to the Contractor in accordance with the terms of the letter of credit. If financial arrangements are other than by letter of credit, CCC will deliver

the product in-store to the Contractor by issuing to the warehouseman a Notice to Deliver authorizing him to release the product immediately to the Contractor. The original of the Notice to Deliver will be mailed to the warehouseman and a copy thereof will be mailed to the Contractor. The date of mailing the Notice to Deliver shall be the date of its issuance.

- B. CCC will be liable for 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 load-out charges, on any lot of dairy products 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.

## XII. TRANSIT

CCC may include instructions in the Notice to Deliver for the application of available registered freight bills, if any, properly endorsed, for use by the Contractor on the outbound shipment if made by rail. If outbound shipment is made by rail, the Contractor agrees to have the warehouseman apply the transit, CCC will then invoice the Contractor for the difference between the flat rate from the warehouse to destination and the amount paid the carrier by the Contractor, and the Contractor shall pay such difference to CCC: Provided, That the Contractor shall not be required to apply the transit and to pay such difference to CCC if he has bought the dairy products for subsequent processing in transit and the application of the above-mentioned registered freight bills would prevent the Contractor from deriving the benefit of the subsequent through rate. In any event, the Contractor agrees to have the warehouseman furnish CCC with a copy of the outbound bill regardless of the mode of transportation.

## III. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress, Resident Commissioner, shall be admitted to any share or part of the 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 Delegate to Congress or a Resident Commissioner in his/her capacity as a farmer.

#### XIV. COVENANT AGAINST CONTINGENT FEES

Offeror warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by 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 deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### XV. DISPUTES

- A. The contract awarded is subject to the Contract Disputes Act of 1978 (P.L. 95-563).
- B. Except as provided in the Act, all disputes arising under or relating to the contract shall be resolved in accordance with this "Disputes" Paragraph XV.
- C.
  1. As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to the contract.
  2. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim pursuant to the Act.
  3. A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for decision. A claim by the Government against the Contractor shall be subject to a decision by the Contracting Officer.
- D. For Contractor claims of more than \$50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable. The



certification shall be executed by the Contractor if an individual. When the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved or by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

- E. For Contractor claims of \$50,000 or less, the Contracting Officer must render a decision within 60 days. For Contractor claims in excess of \$50,000, the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when the decision will be made.
- F. The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- G. The authority of the Contracting Officer under the Act does not extend to claims or disputes which by statute or regulation other agencies are expressly authorized to decide.
- H. Interest on the amount found due on the Contractor claim shall be paid from the date the claim is received by the Contracting Officer until the date of payment.
- I. Except as the parties may otherwise agree, pending final resolution of a claim by the Contractor arising under the contract, the Contractor shall proceed diligently with the performance of the contract in accordance with the Contracting Officer's decision.

#### XVI. 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.

#### X. INQUIRIES

Inquiries pertaining to this Announcement should be directed to the Kansas City Commodity Office, P. O. Box 205, Kansas City, Missouri 64141. Telephone: Area Code 913-236-3057.