

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

EFFECTIVE DATE: April 1, 2011

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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 on the [WBSCM public procurement page](#) and available through links on the [Commodity Operations website](#).**

Bidders are required to read the MSCP, IFB, and USDA Commodity Requirements to understand the invitation, 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. Each invitation will incorporate the MSCP, which will be applicable for that invitation. Bidders should not assume that a copy of the MSCP, once downloaded for a particular IFB will be applicable for subsequent IFBs. The effective date at the top of the MSCP document will govern which version of MSCP is applicable to a particular IFB. Changes to the MSCP will be bolded in each version. **Prior versions of the MSCP will be archived and available on the [Commodity Operations Archived MSCPs webpage](#).**

Bidders are encouraged to utilize the Food and Drug Administration's (FDA) newly established Food Defense Mitigation Strategies Database (MSD) available at: www.accessdata.fda.gov. The MSD provides a range of food security preventive measures that food companies can implement to prevent intentional acts of contamination or tampering. Each company is encouraged to select the appropriate measures that best fit its needs. The MSD is designed as a resource for companies that produce, manufacture, process, package, distribute, store, and/or transport food or food ingredients. Questions and answers, and a description of the MSD is available at: www.fda.gov/msd. While having a food defense plan is currently voluntary, USDA encourages all food facilities to conduct a vulnerability assessment and implement a food defense plan with appropriate mitigation strategies. Under the FDA Food Safety Modernization Act (FSMA), food facilities registered with FDA will soon be required to conduct a hazard analysis and implement a preventive controls plan that addresses all reasonably foreseeable hazards, including hazards that may be intentionally introduced. In addition, as required by the FSMA, FDA is currently developing regulations that will require new mitigation strategies for foods deemed to be a high risk of intentional adulteration.

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://acquisition.gov/far/index.html>

<http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas-vr>

This version of the MSCP incorporates clauses and provisions in effect through **FAC 2005-50**.

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/FSA/webapp?area=home&subject=coop&topic=pas-vr>. 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) For dairy products, have a number of dairy plants approved by Agricultural Marketing Service (AMS) sufficient to produce the quantity offered. The USDA AMS plant approval code must match the appropriate product or operation code for the commodity being offered.
- (c) 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.
- (d) 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) **All prospective bidders are required to submit offers electronically via the [USDA Web Based Supply Chain Management \(WBSCM\) system](#). All offers are subject to all requirements of WBSCM and the invitation, including but not limited to—**

- (i) **Obtaining a USDA eAuthentication logon ID and password to access the WBSCM system. (Contact the WBSCM Help Desk at (877) 927-2648 or WBSCMhelp@ams.usda.gov for information regarding logon IDs, passwords, and WBSCM system questions or concerns.)**
- (ii) 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:
 - (1) Any failure of the bidder's computer hardware or software;
 - (2) Availability of the ISP;
 - (3) Delay in transmission due to the speed of the modem;
 - (4) Delay in transmission due to excessive volume of Internet traffic.
- (c) **When authorized in an IFB**, hard copy bids sent through regular mail or hand-delivered must be sealed in an envelope 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 Invitation for Bid Number (enter appropriate number)." For express mail bids, this statement shall be printed clearly on the outer express envelope, not the mailing label.

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:
 - (i) For commodities purchased for domestic programs, the total cost to the Government to deliver the product to the ultimate destination, or;
 - (ii) For commodities purchased for international programs, the lowest-landed cost to the Government to deliver the products to overseas destination, or;
 - (iii) For commodities purchased for instore delivery, the total cost to the Government including location and storage rates.

With respect to factor number 2) above, as provided in AGAR 470.201 and 470.202, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or related freight, when combined with offers for commodities or related freight, results in a lower landed cost to the Government. In addition, 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 international 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:

- (i) 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;
- (ii) 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
- (iii) 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 2011)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is provided in AGAR Provision 452.219-70, Size Standard and NAICS Code Information (Sep 2001).

(2) The small business size standard is provided in AGAR Provision 452.219-70, Size Standard and NAICS Code Information (Sep 2001).

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)(1) If the clause at 52.204-7, Central Contractor Registration, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the clause at 52.204-7 is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

(i) Paragraph (d) applies.

(ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step

sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) [52.204-3](#), Taxpayer Identification. This provision applies to solicitations that do not include the clause at [52.204-7](#), Central Contractor Registration.

(iv) [52.204-5](#), Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) [52.209-5](#), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vi) [52.214-14](#), Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(vii) [52.215-6](#), Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(viii) [52.219-1](#), Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(ix) [52.219-2](#), Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(x) [52.222-22](#), Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at [52.222-26](#), Equal Opportunity.

(xi) [52.222-25](#), Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at [52.222-26](#), Equal Opportunity.

(xii) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xiii) [52.223-1](#), Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA–designated items; or include the clause at [52.223-2](#), Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xiv) [52.223-4](#), Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA–designated items.

(xv) [52.225-2](#), Buy American Act Certificate. This provision applies to solicitations containing the clause at [52.225-1](#).

(xvi) [52.225-4](#), Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$67,826, the provision with its Alternate II applies.

(xvii) [52.225-6](#), Trade Agreements Certificate. This provision applies to

solicitations containing the clause at [52.225-5](#).

(xviii) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification. This provision applies to all solicitations.

(xix) [52.225-25](#), Prohibition on Engaging in Sanctioned Activities Relating to Iran-Certification. This provision applies to all solicitations.

(xx) [52.226-2](#), Historically Black College or University and Minority Institution Representation. This provision applies to—

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

(2) The following certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

(i) [52.219-22](#), Small Disadvantaged Business Status.

(A) Basic.

(B) Alternate I.

(ii) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.

(iii) [52.222-48](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.

(iv) [52.222-52](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

(v) [52.223-9](#), with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA—Designated Products (Alternate I only).

(vi) [52.223-13](#), Certification of Toxic Chemical Release Reporting.

(vii) [52.227-6](#), Royalty Information.

(A) Basic.

(B) Alternate I.

(viii) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

(d) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

| FAR CLAUSE # | TITLE | DATE | CHANGE |
|--------------|-------|------|--------|
|--------------|-------|------|--------|

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

(End of provision)

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

52.209-5 Certification Regarding Responsibility Matters (Apr 2010)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are or are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have or have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks “have”, the offeror shall also see 52.209-7, if included in this solicitation);

(C) Are or are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) Have or, have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) *Examples.*

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement

pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has or has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) “Principal,” for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror’s responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

(Applicable to solicitations where the contract value is expected to exceed the simplified acquisition threshold.)

52.209-7 Information Regarding Responsibility Matters (Jan 2011)

(a) Definitions. As used in this provision—

“Administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It

does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

“Federal contracts and grants with total value greater than \$10,000,000” means—

(1) The total value of all current, active contracts and grants, including all priced options; and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror [] has [] does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIS as required through maintaining an active registration in the Central Contractor Registration database at <http://www.ccr.gov> (see [52.204-7](#)).

(End of provision)

(Applicable to solicitations where resultant contract value is expected to exceed \$500,000.)

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.)
- 52.214-34 Submission of Offers in the English Language (Apr 1991)**
- 52.214-35 Submission of Offers in U.S. Currency (Apr 1991)**
- 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.)

52.225-4 Buy America Act- Free Trade Agreements-Israeli Trade Act Certificate (June 2009)

- a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act–Free Trade Agreements–Israeli Trade Act.”
- b) The offer certifies that the following supplies are Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, or Peruvian End Products) or Israeli End Products as defined in the clause of this solicitation entitled “Buy American Act-Free Trade Agreements-Isreali Trade Act.” : Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, or Peruvian End Products) or Israeli End Products:

| Line Item No. | Country of Origin |
|---------------|-------------------|
| | |
| | |
| | |

[List as necessary]

- c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

| Line Item No. | Country of Origin |
|---------------|-------------------|
| | |
| | |
| | |

[List as necessary]

- d) The Government will evaluate offers in accordance with the policies and procedures of [Part 25](#) of the Federal Acquisition Regulation

(End of Provision)

(Applicable for acquisitions valued at \$25,000 or more, but less than \$203,000 and only to the packaging and container components utilized by commodity vendors selling agricultural products to KCCO; not applicable to the acquisition of empty 50 kg polypropylene bags, needles, and twine.)

52.225-6 Trade Agreements Certificate (Mar 2009)

- (a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S. made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."
- (b) The offeror shall list as other end products those supplies that are not U.S.- made or designated country end products.

Other End Products:

| End Products | Country of Origin |
|--------------|-------------------|
| | |
| | |
| | |

[List as necessary]

- (c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.- made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.- made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

(End of Provision)

(Applicable for acquisitions valued at \$203,000 or more and only to the packaging and container components utilized by commodity vendors selling agricultural products to KCCO; not applicable to the acquisition of empty 50 kg polypropylene bags, needles, and twine.)

52.232-15 Progress Payments Not Included (Apr 1984)

52.233-2 Service of Protest (Sep 2006)

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 \$150,000.)

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:
<https://www.acquisition.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 (Sep 2001)

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 (SFSO) | 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 |
| Cheese (Bulk) (BCD) Cheese (Processed) (PCD) Mozzarella Cheese (MCD) | 311513 | 500 |
| Evaporated Milk (EVD) Infant Formula (IFD) Instant Nonfat Dry Milk (IMD) Nonfortified Nonfat Dry Milk (DMD) Nonfortified Nonfat Dry Milk-Export (DME) 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) "Agricultural commodity" means:

(i) For international feeding and development programs:

As provided by 7 U.S.C. 1732(2), 1736o-1(a), and AGAR 470.103, commodities and the products of agricultural commodities shall be products of United States origin. A product shall not be considered to be a product of the United States if it contains any ingredient that is not produced in the United States, if that ingredient is:

1. Produced in the United States; and
2. Commercially available in the United States at fair and reasonable prices from domestic sources.

(ii) For domestic food assistance programs:

As provided by AGAR 470.103(b) commodities and the products of agricultural commodities acquired for use by the Food and Nutrition Service shall be a product of the United States, except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to ingredients. Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

- (1) Produced in the United States; and
- (2) Commercially available in the United States at fair and reasonable prices from domestic sources.

(iii) Except as provided in paragraph (iv) of this section, a commingled product shall be considered to be a product of the United States if the offeror can

establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to the offeror, or obtains during the contract performance period specified in the solicitation, or combined thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the United States.

- (iv) To the extent USDA has determined a commodity is one that is generally commingled, but is also one which can be readily stored on an identity preserved basis with respect to its country of origin, the USDA may require that the commodity procured by the Department shall be of 100 percent United States origin.

The Government has determined that the following commodities shall be 100 percent United States origin and provided on an identity preserved basis:

Dry beans, peas and lentils procured for use in international food aid programs

- (b) “Commodity Credit Corporation (CCC)” means a wholly-owned government corporation within the U.S. Department of Agriculture (USDA).
- (c) “CCC List of Approved Warehouses” means a list of grain warehouses approved under the Uniform Grain and Rice Storage Agreement (UGRSA).
- (d) Free alongside ship (f.a.s.) (**named port of shipment) means a term of sale which means the seller fulfills its obligation to deliver when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment. The buyer bears all costs and risks of loss of or damage to the goods from that moment.
- (e) “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.
- (f) “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.
- (g) “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.
- (h) “Intermodal plant” means delivered free of expense to the Government loaded on board the carrier-supplied conveyance at the origin point.

- (i) “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.
- (j) “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.
- (k) “Instore” means within a USDA-approved warehouse.
- (l) “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.
- (m) “Notice to Deliver,” Form KC-269, means the contracted shipping or delivery instructions issued by the Government to the contractor.
- (n) “Packaging and containers” includes any substance intended for use as a component of materials used in manufacturing, packing, transporting or holding food if such use is not intended to have a technical effect in such food.
- (o) **“Plant” is defined as the prime contractor’s or subcontractor’s facility where an agricultural commodity is made or processed from raw materials into the finished product, or assembled from components, or packaged as provided in the contract specifications, or warehoused after processing/assembling/ packaging; and from which the supply is delivered Intermodal Plant, Intermodal Bridge, f.a.s. vessel, and/or f.o.b. vessel in performance of the contract. It is understood that an offeror’s plant location in an offer represents the offeror’s plant as defined in this section.**
- (p) “Shipment Information Log,” Form KC-366, means the accounting of the contracted shipping or delivery of commodities for overages, shortages and/or damage.
- (q) “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.
- (r) “World Trade Organization Government Procurement Agreement (WTO GPA) country” means any of the following countries: Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan or United Kingdom.

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.

Paragraphs (a) through (j) below apply to contracts awarded under KCCO legacy IT systems.

Paragraph (k) below applies to purchase orders issued under the WBSCM system.

- (a) For f.o.b. destination shipments from the Continental United States (CONUS) for overseas delivery (under domestic food assistance programs) where the contractor is responsible for the ocean transportation to the final off-shore destination and acceptance occurs at origin

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 less any advance payments disbursed for the products being invoiced;
- (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) 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.
- (viii) For bulk shipments, weight certificates;
- (ix) For rice products, FGIS Official (Original) Commodity Inspection Certificate and a statement from the contractor certifying that the rice was fumigated;
- (x) For dairy products;
 - (A) The AMS Commodity Inspection Certificate or Cheese Graders Memorandum, and Certificate of Analysis (COA), or;
 - (B) If the Contractors Quality Control Management System was reviewed and found acceptable for the contract by USDA, the Contractor's commodity inspection certificate and COA.If product delivered falls with the quality discount table as outlines in the commodity specifications, those factors shall be identified by an asterisk on the copies of COA;
- (xi) If not otherwise provided for under (ix) or (x)(A), a copy of a Government-issued inspection certificate; and
- (xii) A copy of the checkloading certificate as issued by USDA.

- (b) For f.o.b. destination shipments within CONUS and for f.o.b. destination shipments for domestic food assistance to be delivered outside CONUS where acceptance occurs at destination

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) 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.
- (viii) For bulk shipments, weight certificates;
- (ix) For rice products, FGIS Official (Original) Commodity Inspection Certificate and a statement from the contractor certifying that the rice was fumigated;
- (x) For dairy products;
 - (C) The AMS Commodity Inspection Certificate or Cheese Graders Memorandum, and Certificate of Analysis (COA), or;
 - (D) If the Contractors Quality Control Management System was reviewed and found acceptable for the contract by USDA, the Contractor's commodity inspection certificate and COA.If product delivered falls with the quality discount table as outlines in the commodity specifications, those factors shall be identified by an asterisk on the copies of COA;
- (xi) 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 (reserve 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.”

- (c) For f.a.s. vessel, intermodal bridge, and intermodal bridge-port point for the Great Lakes shipments with acceptance occurring at origin

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 less any advance payments disbursed for the products being invoiced;
- (v) Terms of any discount for prompt payment offered;
- (vi) If shipment of packaged product to contracted delivery point is by rail or truck, a Commercial Bill of Lading; otherwise, a KC-366 including Part 1 documenting packaged product quantity (actual units and net weight) and date the packaged product is placed at contracted delivery point;
- (vii) Copy of Government-issued inspection certificate;
- (viii) Copy of FGIS Official (original) inspection certificates, if required;
- (ix) Statement from the contractor certifying fumigation of product, if required;
- (x) 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; and
- (xi) Copy of checkloading certificate as issued by USDA.

- (d) For f.a.s. vessel, intermodal plant, intermodal bridge, and intermodal bridge-port point for the Great Lakes shipments with acceptance occurring at final contracted destination

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) If shipment of packaged product to contracted delivery point is by rail or truck, a Commercial Bill of Lading; otherwise, a KC-366 including Part 1

- documenting packaged product quantity (actual units and net weight) and date the packaged product is placed at contracted delivery point;
- (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;
- (xi) Proof of delivery as stipulated in the following table:

| Delivery Basis | Proof of Delivery |
|--|---|
| Intermodal plant | A bill of lading, showing unit count, including documentation of carrier acceptance. |
| Intermodal Bridge and Intermodal Bridge Point for the Great Lakes | A bill of lading, consignee receipt, the ex railcar portion (part 2) of the KC-366, signed by the freight forwarder/unloading stevedore, as proof of delivery at the intermodal bridge point, or similar document signed by the unloader and receiver showing count and over, short and damage. |
| F.A.S. Vessel | A Dock Receipt, Consignee Receipt, the Ex Railcar portion (part 2) of the KC-366, signed by the freight forwarder/unloading stevedore, as proof of delivery at the FAS position or similar document signed by the unloader and receiver showing count and over, short and damage. |

- (xii) For dry edible bean (DEB) contracts only, checkloading as evidenced by either a FGIS-issued certificate or reported on a FGIS-issued commodity inspection certificate.
- (e) 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.
- (f) 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.
- (g) 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.

(h) For f.a.s. vessel - bags and twine shipments with acceptance occurring at origin

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 less any advance payments disbursed for the products being invoiced;
- (v) Terms of any discount for prompt payment offered;
- (vi) Commercial Bill of Lading;
- (vii) Copy of Government-issued inspection certificate; and
- (xi) Copy of checkloading certificate as issued by USDA.

(i) For f.a.s. vessel - bags and twine shipments with acceptance occurring at final contracted destination

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 a dock receipt, consignee receipt, the ex railcar portion (part 2) of the KC-366, signed by the freight forwarder/unloading stevedore, as proof of delivery at the f.a.s. position or similar document signed by the unloader and receiver showing count and over, short and damage.

(j) 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.

- (k) For purchase orders issued through WBSCM, the contractor shall use the invoicing function in WBSCM. In order to receive payment, all required documentation must be completed or loaded in WBSCM by the contractor, goods recipient representative, or inspector including—**
- 1. Advance Shipping Notice (ASN),**
 - 2. Goods Receipt, and**
 - 3. Required inspection certificates (see paragraphs (a) through (j) for the type of inspection evidence required).**

3. Regulatory Requirements for Commodities and Packaging

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.

All containers and packaging materials shall be constructed to meet the requirements of the Food and Drug Administration for safe contact with the packaged product.

In addition, all containers and packaging materials shall be constructed to comply with the sum concentration levels of lead, cadmium, mercury, and hexavalent chromium addressed by the Coalition of Northeast Governors (CONEG) model legislation. The sum of the concentration levels of lead, cadmium, mercury, and/or hexavalent chromium present in any package or packaging component shall not exceed 100 parts per million. Concentration levels shall be determined using American Standard of Testing Materials test methods, as revised, or U.S. Environmental Protection Agency test methods for evaluating solid waste, S-W 846, as revised.

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) 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, on gross metric tons (net metric tons for wheat and sorghum), 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, ½ 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 ½ percent of the f.o.b. price;
- (4) If exceeded by more than 8 days, an additional premium of ¼ 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. U.S. Origin of Agricultural Commodities - Waiver for Certain Ingredients

The requirement for a commodity and/or a component ingredient to be entirely produced and/or processed in the United States (see Part 3, Section A, 1. Definitions, (a) "Agricultural Commodity") may be waived due to non-availability at fair and reasonable prices.

- (a) Waived ingredients may be subject to the standard definition of the Buy American Act, which uses as two- part test to define a domestic end product:
- (1) The article must be manufactured in the United States; and
 - (2) The cost of domestic components must exceed 50 percent of the cost of all the components.
 - (i) The following ingredients are subject to the standard definition of the Buy American Act:
[Reserved]

(b) Waived ingredients may be acquired as a foreign end product without regard to the restrictions of the Buy American Act.

(1) The following ingredients have been determined by the Head of Contracting Activity Designee as not available at fair and reasonable prices and are waived from all Buy American Act and domestic origin restrictions:

- Vitamin A (Retinol Palmitate)
- Vitamin D
- Carageenan (stabilizing agent)
- Sorbic Acid (preservative)
- Potassium Sorbate (preservative)
- Rennet (coagulant)

8. Shipping and Delivery Instructions

The Government shall issue shipping instructions to the contractor electronically, through either “Notices to Deliver” emails or purchase orders in WBSCM system, depending on the procurement system utilized. The contractor shall be responsible for ensuring that it is capable of receiving email communications and/or accessing WBSCM system during the course of the contract. The contractor shall ensure that it has an accurate email address on file with the Government. The Government will not be responsible for any failure of contractor receipt of electronic shipping instructions attributable to inoperable receiver equipment and/or software. The Government reserves the right, at its option, to issue shipping instructions by other means such as, but not limited to, facsimile transmission or regular mail.

9. Shipment and Delivery

(a) For Domestic Programs:

(i) For contracts awarded under the legacy system:

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

(ii) For purchase orders issued under the WBSCM system:

- a. **The receiving warehouse, “Ship To” party shown on WBSCM purchase order, shall be called at least 24 hours in advance to schedule an unloading appointment. This is not required for rail shipments.**
- b. **The contractor shall submit Advance Shipping Notifications (ASNs) for each conveyance (railcar, truck, or ocean containers) shipped under the purchase order. ASN must be created in WBSCM (through data entry or upload). Contractors shall notify the contracting officer in advance if shipments will not be made by the final shipment date under the contract.**

- (b) For International Programs - Packaged Commodities:
 - (i) For contracts awarded under the legacy system:
 - a. The Notify Party shown on the KC-269, Notice to Deliver, shall be contacted prior to shipment.
 - b. 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 The KC-366 is to be faxed as early as possible each Tuesday and Thursday, until shipping is complete, to both International Procurement 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.
 - (ii) **For purchase orders issued under the WBSCM system:**
 - a. **The Freight Forwarder identified on the WBSCM purchase order shall be contacted prior to shipment.**
 - b. **The contractor shall submit Advance Shipping Notifications (ASNs) for each conveyance (railcar, truck, or ocean containers) shipped under the purchase order. ASN must be created in WBSCM (through data entry or upload). Contractors shall notify the contracting officer in advance if shipments will not be made by the final shipment date under the contract.**

10. 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>.

11. 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.

12. 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.

13. Checkloading

Applicable only to contracts for dry, edible beans purchased for export programs.

Pursuant to contract clause 52.246-2, Inspection of Supplies—Fixed Price, all product shipped under contract shall be checkloaded by FGIS or its designee at origin. The contractor is responsible for giving advance notice to FGIS for a checkloader to be present. If FGIS is in residence in the contractor's plant, contractor shall give FGIS no less than one and no more than two workdays advance notice. If FGIS is not in residence in the contractor's plant, contractor shall give FGIS no less than two and no more than seven days advance notice. At the contractor's option, it may elect to arrange for inspection and checkloading at the contracted place of delivery. In such case, contractor shall give FGIS no less than two and no more than seven days advance notice.

The results of the checkloading will be reported on a commodity inspection certificate. The cost of checkloading, wherever performed, shall be for the account of the contractor. Checkloading shall not relieve the contractor of its responsibility to deliver a product meeting contract requirements or constitute a waiver of any of the Government's rights under the contract.

14. Acceptance

If the Government has performed inspection at origin, including checkloading, formal acceptance shall take place at origin. In all other instances, formal acceptance shall occur when the Government approves the invoice for payment.

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 \$150,000.)

52.203-5 Covenant Against Contingent Fees (Apr 1984)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$150,000.)

- 52.203-6 Restrictions on Subcontractor Sales to the Government (Sep 2006)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$150,000.)
- 52.203-7 Anti-Kickback Procedures (Oct 2010)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$150,000.)
- 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 \$150,000.)
- 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$150,000.)
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$150,000.)
- 52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010)**
(Applicable for contracts with values expected to exceed \$5 million, and with a performance period of 120 days or more.)
- 52.203-14 Display of Hotline Poster(s) (Dec 2007)**
- (a) Definition.
“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.
 - (b) *Display of fraud hotline poster(s)*. Except as provided in paragraph (c)—
 - (1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—
 - (i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
 - (ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.
 - (2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.
 - (3) Any required posters may be obtained as follows:

Poster(s)

USDA Hotline,
“Report Violations of Laws and Regulations
Relating to USDA Programs”

Obtain from

USDA Office of Inspector General
www.usda.gov/oig/hotline.htm
Toll Free Number: (800)424-9121

- (c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.
- (d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—
 - (1) Is for the acquisition of a commercial item; or
 - (2) Is performed entirely outside the United States.

(End of clause)

(Applicable for non-commercial item contracts performed within the United States if the contract value is expected to exceed \$5 million.)

52.204-7 Central Contractor Registration (Apr 2008)

NOTE: If the offeror is not registered in the CCR database at the time bids are due, offers will be deemed non-responsive.

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Jul 2010)

(a) *Definitions.* As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by a Contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a Contractor’s general and administrative expenses or indirect cost.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency

Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c)(1) Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, (and any modifications to these subcontracts that change previously reported data), the Contractor shall report the following information at <http://www.fsrs.gov> for each first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsrs.gov> to report the data.)

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(2) By the end of the month following the month of a contract award, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for the Contractor's preceding completed fiscal year at <http://www.ccr.gov>, if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public

has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(3) Unless otherwise directed by the contracting officer, by the end of the month following the month of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for each first-tier subcontractor for the subcontractor's preceding completed fiscal year at <http://www.fsr.gov>, if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(d)(1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards to that subcontractor.

(e) Phase-in of reporting of subcontracts of \$25,000 or more.

(1) Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was \$20,000,000 or more.

(2) From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$550,000 or more.

(3) Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$25,000 or more.

(End of clause)

(Applicable to all solicitations and contracts of \$25,000 or more.)

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/FSA/webapp?area=home&subject=coop&topic=pas-vr>.

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sep 2006)
(Applicable for contracts exceeding \$30,000.)

52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters (Jan 2011)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the Central Contractor Registration database at <http://www.ccr.gov>.

(b)(1) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(2) The Contractor will have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.*, for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3)(i) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(ii) As required by section 3010 of Public Law 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(End of clause)

(Applicable to solicitations where the resultant contract value is expected to exceed \$500,000, and applicable to contracts in which the offeror checked "has" in paragraph (b) of the provision [52.209-7](#).)

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/FSA/webapp?area=home&subject=coop&topic=pas) | | 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) | | |
| Bakery Mix Products | (BFM) | \$ 0.15 | Cwt/day |
| 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) | \$ 0.35 | Cwt/day |
| Vegetable Oil Products | (VP) | | |
| 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) | | |
| Nonfortified Nonfat Dry Milk-Export | (DME) | | |
| Peanut Products | (PP) | | |
| 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 each Notice to Deliver per contract.
- 52.214-26 Audit and Records—Sealed Bidding (Oct 2010)**
(Applicable for contracts exceeding \$700,000.)
- 52.214-27 Price Reduction for Defective Cost or Pricing Data-Modifications- Sealed Bidding (Oct 2010)**
(Applicable for contracts exceeding \$700,000.)
- 52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Oct 2010)**
(Applicable for contracts exceeding \$700,000.)
- 52.219-3 Notice of Total HUBZone Set-Aside (Jan 2011)**
(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 (Jan 2011)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$150,000.)
- 52.219-9 Small Business Subcontracting Plan (Apr 2008) Alternate 1 (Jan 2011)**
(Applicable for contracts exceeding \$650,000.)
- 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 \$150,000; 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 \$3,000.)

- 52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (Jul 2005)**
(Applicable for contracts exceeding \$150,000.)
- 52.222-21 Prohibition of Segregated Facilities (Feb 1999)**
- 52.222-26 Equal Opportunity (Mar 2007)**
- 52.222-35 Equal Opportunity for Veterans (Sep 2010)**
(Applicable for contracts exceeding \$100,000.)
- 52.222-36 Affirmative Action for Workers with Disabilities (Oct 2010)**
(Applicable for contracts exceeding \$15,000.)
- 52.222-37 Employment Reports on Veterans (Sep 2010)**
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act. (Dec 2010)**

(Applicable for contracts over the simplified acquisition threshold and for indefinite-quantity contracts where the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold.)
- 52.223-6 Drug-Free Workplace (May 2001)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$150,000 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.)
- 52.223-18 Contractor Policy to Ban Text Messaging While Driving (Sep 2010)**
- 52.225-3 Buy American Act-Free Trade Agreements-Israeli Trade Act (Jun 2009)**
(Applicable for contracts valued at \$25,000 or more but less than \$203,000 and only to the packaging and container components utilized by commodity vendors selling agricultural products to KCCO; not applicable to contracts for empty 50 kg polypropylene bags, needles, and twine.)
- 52.225-5 Trade Agreements. (Aug 2009)**
(Applicable for contracts valued at \$203,000 or more and only to the packaging and container components utilized by commodity vendors selling agricultural products to KCCO; not applicable for empty 50 kg polypropylene bags, needles, and twine.)
- 52.225-13 Restrictions on Certain Foreign Purchases (Jun 2008)**
(Applicable to contracts for empty 50 kg polypropylene bags, needles, and twine, and only the packaging and container component.)

- 52.226-6 Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009)**
- 52.228-2 Additional Bond Security (Oct 1997)**
(Applicable for contracts that require a performance bond.)
- 52.228-11 Pledge of Assets (Sep 2009)**
(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 \$150,000.)
- 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 (Oct 2010)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$150,000.)
- 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/FSA/webapp?area=home&subject=coop&topic=pas>
 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 2008)**
- 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 \$150,000.)
- 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 2010)**
(Additionally, the clause with its Alternate I is applicable for contracts exceeding \$5 million.)
- 52.245-1 Government Property (Aug 2010) Alternate I (Aug 2010)**
(Applicable for any contract where Government property is furnished.)
- 52.246-2 Inspection of Supplies- Fixed-Price (Aug 1996)**
Pursuant to FAR 46.401(b) & (c), the Government reserves the right to perform quality assurance at source; source includes, but are not limited to, contractor's manufacturing facility, packaging facility, warehouse, in-house laboratory, subcontractor's facilities, etc.
- 52.246-11 Higher-Level Contract Quality Requirement (Feb 1999)**
The contractor shall have in place a quality control system consistent with the following ISO principles specified in ANSI/ISO/ASQ Q9001-2000 "Quality Management Systems Requirements"¹:
- 4, Quality Management System
 - 5.1, Management Commitment
 - 5.3, Quality Policy
 - 5.5, Responsibility, Authority, Communication
 - 5.6, Management Review (Limited to 5.6.1 and 5.6.2)
 - 6, Resource Management
 - 7.1, Planning of Product Realization
 - 7.2, Customer Related Processes
 - 7.4, Purchasing Process
 - 7.5, Production and Service Provision
 - 7.6, Control, Monitoring and Measuring Devices
 - 8, Measurement, Analysis and Improvement

(This clause does not apply to bulk grain, bulk rice, and bulk soybean meal purchased for international food assistance programs. This clause does not apply to infant formula, UHT Milk, bulk corn, and nonfortified nonfat dry milk purchased for domestic food distribution programs.)

(KCCO's Quality Assurance Surveillance Plan defines the Government's methodology for monitoring contractor compliance with the higher-level standard and can found on the Commodity Operations website at:

<http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas.>)

(The ISO 9001-2000 standard can be ordered from the ANSI Electronics Standards Store at <http://www.ansi.org.>)

(End of Clause)

¹Official ISO certification is not required.

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 \$150,000 or less.)

52.249-2 Termination for Convenience of the Government (Fixed-Price) (May 2004)

(Applicable for contracts exceeding \$150,000.)

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://acquisition.gov/far/index.html>

<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)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon—

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin;

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination;

- (3) Delivery of the supplies when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment, if transportation is f.a.s. (named port of shipment). If the named port of shipment has warehouse/berth/terminal/transload facilities available and contractor's shipment(s) is unloaded into such a facility as named by the ocean carrier rather than placed alongside vessel on the quay or in lighters, then risk of loss of or damage to supplies shall pass from the contractor at the point where the supplies come to rest in the warehouse/berth/terminal/transload facility 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; or
 - (8) Receipt by the Government of a warehouse receipt or a certified Form KC-228 covering supplies being delivered, if delivered Instore.
- (c) Paragraph (b) of this clause shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.
- (d) Under paragraph (b) of this clause, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(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
international programs.)