

UNITED STATES
DEPARTMENT OF
AGRICULTURE

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FARM SERVICE
AGENCY

ANNOUNCEMENT KCPBS2 PURCHASE OF BULK SUGAR

Terms and Conditions



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ANNOUNCEMENT KCPBS2 PURCHASE OF BULK SUGAR

1. GENERAL

A. Invitation for Offers

- (1) Under this Announcement, the Commodity Credit Corporation (CCC) will from time to time issue an invitation to purchase bulk sugar, instore, in accordance with the announcement.
- (2) The invitation will specify the office to which offers are to be submitted, the closing time for receipt of offers, and provisions applicable to the proposed procurement, which are in addition to or different from those set forth herein.
- (3) Sales under this announcement by sugarcane or sugar beet processors will be charged against the processor's marketing allocation for the fiscal year in which the sale occurred.

B. Terms and Conditions

- (1) Participation in this announcement serves as certification that offerors are Debt Collection Improvement Act (DCIA) compliant and free from delinquency on any Federal Non-Tax debt.
- (2) Offerors are cautioned to read all terms and conditions of this announcement and the invitation in their entirety.

C. Definitions

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

- (1) "Accepting Official," means a person with the authority to enter into, administer, and/or terminate this Announcement and make related determinations and findings on behalf of Agency.
- (2) "Agency," means the Commodity Credit Corporation (CCC).
- (3) "Agency head" or "Secretary," means the Secretary of Agriculture, Chairman of the Commodity Credit Corporation, or a representative thereof unless otherwise specified.
- (4) "Agricultural commodity," means a raw agricultural commodity or a product thereof.
- (5) "Business day," means a calendar day, excluding Saturday, Sunday, and Federal holidays (unless business activity occurred).
- (6) "Causes," as used in the phrase "causes beyond the control and without the fault or negligence" means, but is not restricted to, Force Majeure, acts of the Agency in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; however, in every case the failure to perform must be beyond the control and without the fault or negligence of the party to this Announcement seeking excuse from liability.
- (7) "The commodity," means the agricultural commodity delivered or to be delivered to Agency by Offeror or the serviced commodity produced or to be produced by Offeror from the agricultural commodity delivered by Agency to Offeror.
- (8) "Commodity Office," means the Kansas City Commodity Office (KCCO), the Farm Service Agency (FSA) or such other office as may be specified in this Announcement.
- (9) "CCC," means Commodity Credit Corporation, a wholly owned corporation of the United States (U.S.) within the Department of Agriculture (USDA).
- (10) "Contract," means the Offeror's offer, Agency's acceptance, this Announcement, the applicable terms and conditions and other documents incorporated by reference.
- (11) "FAS," means the Foreign Agricultural Service Agency of USDA.
- (12) "FSA," means the Farm Service Agency of USDA.

- (13) "ICE," means the IntercontinentalExchange, Inc., which is an operator of regulated exchanges and clearing houses for agricultural, credit, currency, emissions, energy and equity index products.
<https://www.theice.com/homepage.jhtml>
- (14) "ICUMSA," means International Commission for Uniform Methods of Sugar Analysis, which is a world-wide body that brings together the activities of the National Committees for Sugar Analysis in more than thirty member countries. <http://www.icumsa.org>
- (15) "Offer," means the offer to sell the commodity to CCC.
- (16) "Offeror," means the person, firm, corporation, or other legal entity obligated by the purchase contract with CCC. The product must not have been sold before to another party and the Offeror must be the manufacturer or processor of the sugar product offered or a marketing cooperative for the manufacturer. To be eligible to submit an offer under this announcement, the Offeror must meet the definitions of a manufacturer or processor as defined below.
- (a) Manufacturer means a person that owns, operates, or maintains a sugar beet or sugarcane processing plant, a cane refinery or a marketing cooperative that is wholly-owned and controlled by one or more of the above.
- (b) Processor is a person or legal entity that commercially processes sugar beets into refined sugar or processes sugarcane into raw sugar.
- (17) "Section," means one of the Sections of this document.
- (18) "United States" or "U.S.," means the 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

2. SUBMISSION OF OFFERS

A. How to Submit Offers

- (1) Offers, modifications, withdrawals, and cancellations shall be submitted by one of the following methods. Submission via fax is at the Offeror's risk.

- (a) Express or regular mail, and/or hand delivered. Place the notation “Offer under Purchase Announcement KCPBS2,” in the lower-left corner of the envelope.
 - (b) Facsimile (FAX) to (816) 926-6795. Place in the subject line “Offer under Purchase Announcement KCPBS2 Invitation (Enter Appropriate Invitation Number).”
- (2) Offer forms must be signed. Reproductions of the offer form are acceptable.
- (3) CCC will not be responsible for any failure attributed to the transmission or receipt of faxes including, but not limited to, the following:
- (a) Receipts garbled or incomplete;
 - (b) Availability or condition of the receiving fax equipment;
 - (c) Incompatibility between the sending and receiving equipment;
 - (d) Failure of the Offeror to properly identify the information;
 - (e) Illegibility of the information; and
 - (f) Security of data.
- (4) Envelopes containing the offers are to be sealed and marked with the name and address of the offeror in the upper left corner. Offers submitted by express mail must be sealed inside a second envelope. All envelopes must be plainly marked with the following statement, **“DO NOT OPEN UNTIL PRESCRIBED TIME UNDER ANNOUNCEMENT KCPBS2 INVITATION (Enter Appropriate Invitation Number).”** If overnight/express service is utilized, this statement must be printed clearly on the outer express envelope, not on the mailing label.
- (5) Changes by facsimile must contain the required signatures.

B. Where to Submit Offers

- (1) Offers, modifications, withdrawals, and cancellations of offers shall be submitted to the Kansas City Commodity Office (KCCO) and must be received by the date and local time specified in the Invitation for receipt of offers.

- (2) If an offer is sent by fax, the date and time of receipt will be the date and time recorded by the Kansas City Commodity Office's equipment.
- (3) If an offer is sent by express or regular mail and/or hand delivered, the date and time of receipt will be recorded by the Kansas City Administrative Office's (KCAO) mailroom's date and time stamp.

C. What to submit

- (1) Each Offeror shall submit Offer Form, CCC-331-A, contained within the Announcement/Invitation.
- (2) Each Offeror shall submit an Automated Clearing House (ACH) form, SF 3881. The ACH form may be accessed by clicking on the following link:

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

- (3) Reproduction of the forms is permissible.

D. Basis of Offer

- (1) An offer must express a price per unit for the delivery of the commodity, as specified in the invitation on an "instore" basis at an approved Sugar Storage Agreement (SSA) facility.
- (2) The content of an offer will include:
 - (a) The name and address of storage facility;
 - (b) CCC-approved SSA warehouse code;
 - (c) The quantity and quality.

3. ACCEPTANCE OF OFFERS

- A. CCC will notify successful Offerors on the date specified in the invitation. The date of acceptance by CCC will be the contract date.

- B. In addition to the price, factors considered in accepting offers will include, but not be limited to, location, quantity, and the total cost to the Government.
- C. Any qualification or condition in, or added to, the offer may make it ineligible for consideration.
- D. CCC reserves the right to accept or reject any or all offers, or portions thereof.

4. PROVISIONS OF CONTRACT

- A. The contract consists of:
 - (1) This Announcement
 - (2) The applicable Invitation including Exhibits
 - (3) Offer
 - (4) CCC's acceptance of Offer (contingent upon title transfer).
- B. If the provisions of this Announcement and the Invitation are not consistent, those of the Invitation will prevail.
- C. No interpretation or amendment of this Announcement is valid or enforceable unless such interpretation or amendment is in writing and executed by CCC. No other determination or opinion shall be an interpretation.

5. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT

- A. The Government suspends or debars contractors to protect the Government's interests. Contractors must not enter into any subcontract equal to, or in excess of, the small purchase limitation of \$25,000 with a contractor that has been debarred, suspended, or proposed for debarment unless the acquiring agency's head or designee determines there is a compelling reason for such action.
- B. The contractor must require each proposed first-tier subcontractor, whose subcontract shall exceed the small purchase limitation of \$25,000, to disclose to the contractor, in

writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

- C. A corporate officer or a designee of the contractor must notify the contracting officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (Access the System for Award Management (SAM) for information on the List of Parties Excluded from Federal Procurement Programs at www.sam.gov). The notice must include the following:

- (1) The name of the subcontractor;
- (2) The contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement Programs;
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement Programs;
- (4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

6. COMMODITY SPECIFICATIONS

A. Domestic Origin

- (1) The commodity delivered under this announcement must be produced in the United States from commodities produced in the United States.
- (2) For purposes of this section, the following definition applies:

“Produced in the United States” means manufactured, processed, mined, harvested, or otherwise prepared for sale or distribution, from components originating in the United States. Components originating in the United States which have been exported, and subsequently imported back into the United States, will not be considered as having been produced in the United States.

- (3) The Offeror must maintain records to verify that during the contract shipping period, at the point of delivery to CCC, the product was in compliance with the domestic origin requirements of this section of the announcement.
- (4) CCC will randomly conduct domestic origin compliance reviews to determine if the product delivered to CCC was produced and manufactured in the United States from materials produced and manufactured in the United States. Upon request, the Offeror must submit documentation substantiating compliance to the contracting officer for review. This documentation may include procurement, production, inventory, delivery, and any other pertinent records. Onsite reviews may also be performed, at the discretion of CCC.

7. DELIVERY

- A. The commodity offered to CCC for purchase must be delivered from points within the United States.
- B. The commodity must be delivered instore at an approved Sugar Storage Agreement (SSA) warehouse (requirements for CCC-approved warehouses can be found at 7 CFR, Part 1423). The successful offeror must furnish the KC-227 (Raw Sugar Acquisition Report and Invoice for Related Charges) <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/KC227.PDF> or KC-227A (Refined Beet Sugar Acquisition Report and Invoice for Related Charges) <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/KC227-A.PDF> to CCC at the KCCO, or a warehouse receipt acceptable to CCC made out in the name of CCC for the quantity, quality, and at the location called for in the contract.
- C. The start storage date will be specified in the invitation.

8. LIQUIDATED DAMAGES

Compensation to CCC or Third-Party Transferee for Delay in Shipment

Liquidated damages for delay in shipment to CCC or third-party transferee will be payable in accordance with this Announcement, and will be at the rate of \$0.10 per 100 pounds (net weight) per day. The parties mutually agree that in view of the difficulty of determining exact damages which would be incurred, the liquidated damages specified

are a reasonable estimate of the damages which would be suffered as a result of the Offeror's failure to meet the shipping schedule.

9. INSPECTION AND ACCEPTANCE

Failure of The Commodity To Meet Requirements and Specifications of This Announcement

- (1) Offeror shall be liable for failure of the commodity to meet all of the requirements and specifications of this Announcement, subject to the other provisions of this Section.
- (2) If Agency discovers on or after delivery that all or any part of the commodity did not meet the requirements and specifications of this Announcement at time of delivery, Agency shall have the right to:
 - (a) accept or retain the entire quantity and hold Offeror liable for the damages sustained, as determined by Agency, or
 - (b) reject the entire quantity or to reject a portion thereof and accept or retain the remainder. Agency may at its discretion terminate the contract with respect to the quantity rejected or permit Offeror to replace all or part of the quantity rejected with a quantity of the commodity that does conform to all contract requirements and specifications of this Announcement and, in either circumstance, hold Offeror liable for damages sustained, as determined by Agency. To "reject" means to refuse to accept on delivery or, after delivery and acceptance, to notify Offeror of revocation of the acceptance, in whole or in part. In either event, Offeror shall be held liable for all damages sustained, as determined by Agency.
- (3) Any quantity rejected may be returned to Offeror, destroyed, or disposed of for the account of Offeror in accordance with applicable health and sanitation laws and regulations. Any rejection of a quantity of the commodity delivered by common carrier shall be made by the Agency which issued the shipping instructions. Consignee may inform the carrier or Offeror of rejection of a quantity of the commodity delivered by contract carrier or by Offeror's own trucks. Offeror will be advised of Agency's election under (2) b. of this Section either at the time of rejection or within a reasonable time thereafter.

- (4) Inspection, checkloading, issuance of inspection or checkloading certificates, shipping instructions, or bills of lading, any payment by Agency, or the receipt of a commodity shall not constitute a waiver of Agency's rights under this Section.
- (5) The rights and remedies of Agency provided in this Section are not exclusive or in derogation of any other rights and remedies provided by law or this Announcement.

10. LIABILITY

It is the Offeror's responsibility to ensure that at the time of delivery the sugar meets the specifications contained in Section 6, Commodity Specifications of this Announcement. The inspection and grading certificates are not conclusive as to performance of that responsibility. Any subsequent retesting or regrading which establishes that any quantity of sugar did not meet the commodity specifications of Section 6 of this Announcement and the relevant Invitation at the time of delivery, will result in the entire lot being rejected to the Offeror. The Offeror is liable for all incurred charges up to the date of rejection. CCC's payment for the rejected commodity with additional charges shall be promptly refunded to CCC. If not refunded within 10 days from the date of rejection, interest at the rate per annum specified in USDA's notification of late payment and Prompt Payment Act interest rate will be paid by the Offeror from the date of rejection by CCC until the refund is received by CCC.

11. LOSS DUE TO DETERIORATION OR SPOILAGE

Offeror shall reimburse Agency for all losses due to deterioration or spoilage sustained by Agency for which Offeror is responsible, but only if such losses are discovered by such date as may be stated in the terms and conditions, or a reasonable time, as determined by Agency, after delivery if no such date is stated. Offeror agrees to reimburse Agency for such losses within 10 days after date of billing by Agency. That part of the commodity as to which Agency makes a claim based on deterioration or spoilage shall be held by Agency subject to disposition instructions of Offeror (unless the nature of the deterioration or spoilage is such as to require condemnation and destruction as determined by Agency or its authorized representative) but need not be held by Agency in excess of 30 days after Agency sends notice of such claim to Offeror. In lieu of reimbursing Agency, Offeror may replace the deteriorated or spoiled commodity with an equal quantity of commodity which conforms to all contract requirements and specifications of this Announcement, if such replacement is agreed to by Agency.

12. INVOICES FOR PAYMENT

- A. Offeror must furnish an acceptable KC-227, KC-227A, or warehouse receipt or other acceptable document with an invoice for payment.
- B. All required documentation is at offeror's expense.
- C. Invoicing and payment will be handled in accordance with CCC's payment procedures. Invoices must be mailed or faxed to:

(1) By regular mail:

USDA-FSA-DACO-KCCO
Beacon Facility – Mailstop 8698
P. O. Box 419205
Kansas City, MO 64141-6205

(2) For express mail:

Kansas City Commodity Office
USDA-CCC-FSA - Mailstop 8698
6501 Beacon Drive
Kansas City, MO 64133-4676
(Hours: 7:00 A.M. – 5:00 P.M.)

(3) By fax: 816-926-6795

Debt Collection - The Debt Collection Improvement Act of 1996 amended 31 U.S.C. 3332 to require Federal agencies to convert all Federal payments from checks to electronic fund transfers. Payments must be made directly to a financial banking institution.

- D. The quantity of sugar accepted by CCC for this announcement if pledged as collateral for CCC loan, must be redeemed immediately upon CCC's acceptance of the offer.

- E. CCC will make payment in accordance with the requirements of the Prompt Payment Act.

13. INQUIRIES

Please direct inquiries as follows:

- Pertaining to the SSA or the completion of the KC-227, KC-227-A or warehouse receipts: Kerry Dodd, Storage Contract Branch, 816-926-6539, email: kerry.dodd@kcc.usda.gov
- Pertaining to this announcement: Pamela McKenzie, Inventory and Disposition Program Manager, 202-260-8906, email: pamela.mckenzie@wdc.usda.gov
- Pertaining to the sugar purchase: William Lang, Chief, Dairy and Multi-food Branch, Domestic Procurement Division, 816-926-2527, email: william.lang@kcc.usda.gov

James W. Monahan
Deputy Administrator for Commodity Operations
Farm Service Agency