

ANNOUNCEMENT RSCS2

(Supersedes Announcement RSCS1)

Sale of Nonfat Dry Milk for the Manufacture of Casein or Caseinate



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Manufacture of Casein or Caseinate

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United States
Department of
Agriculture

Farm and Foreign
Agricultural Services

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

ANNOUNCEMENT RSCS2
SALE OF NONFAT DRY MILK
FOR THE MANUFACTURE OF CASEIN OR CASEINATE
(Supersedes Announcement RSCS1)

1. GENERAL

A. Invitation for Offers

The Commodity Credit Corporation (CCC) will from time to time issue an invitation for competitive offers under this Announcement for CCC to sell nonfat dry milk (NDM) for use specifically restricted for the conversion of NDM into edible dry acid or rennet casein or edible dry caseinate. The NDM will be sold as is and delivered in-store at the point(s) of storage.

B. Terms and Conditions

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

C. Offer Form

Appendix 1 to this Announcement is the offer form.

2. ELIGIBILITY OF OFFERORS

- A. An offer shall set forth the complete business name and address of offeror. An offer mailed or hand delivered shall be signed by a person authorized to execute contracts on behalf of offeror. Offeror must furnish the names of personnel authorized to sign and submit offer(s) at least one business day prior to submission of offers to Kansas City Commodity Office (KCCO), Commodity Management Division/Merchandising Branch (CMD/MB).
- B. CCC reserves the right to refuse to consider an offer if CCC does not have adequate information to determine the responsibility of offeror, financially or otherwise, to meet contract obligations contemplated in this Announcement. If a prospective offeror is in doubt as to whether CCC is acquainted with the offeror's financial responsibility, the offeror should either submit an audit or review level financial statement prepared by an independent certified public accountant or an independent public accountant according to generally accepted

accounting principles (GAAP) to the KCCO before making an offer or communicate with that office to determine whether such a statement is desired.

3. SUBMISSION OF OFFERS

A. How to Submit Offers

- (1) Offers must be submitted by regular mail, express mail, hand delivered, or facsimile. **(The invitation will specify the office to which offers are to be submitted.)** Offers must include a signed original and one copy of the offer form contained in Appendix 1. Reproductions of the offer form are acceptable.
- (2) Envelopes containing the offers are to be sealed and marked with the name and address of the offeror in the upper left corner. Offers submitted by express mail must be sealed inside a second envelope. **“DO NOT OPEN UNTIL PRESCRIBED TIME UNDER ANNOUNCEMENT RSCS2 DAIRY INVITATION (Enter appropriate invitation number).”** If overnight/express service is utilized, this statement must be printed clearly on the outer express envelope, not the mailing label.
- (3) Modifications and withdrawals of offers may be submitted by letter, express mail, facsimile, or hand delivered.
- (4) Modifications and withdrawals of offers may be submitted via facsimile at the offeror’s risk. CCC will not be responsible for any failure attributed to the transmission or receipt of facsimile changes including, but not limited to the following:
 - (a) Receipt garbled or incomplete.
 - (b) Availability or condition of the receiving facsimile equipment.
 - (c) Incompatibility between the sending and receiving equipment.
 - (d) Delay in transmission or receipt of price changes.
 - (e) Failure of the bidder to properly identify the information.
 - (f) Illegibility of the information.
 - (g) Security of data.
- (5) Changes by facsimile must contain the required signatures.

B. Where and When to Submit Offers

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

C. Basis of offer

Prices shown in offers must be for the entire quantity of NDM delivered to the Contractor by CCC, in-store, at the point(s) of delivery named in the contract. Items with prepaid loadout handling charges will be identified in the invitation. All other costs such as transportation and conversion of the NDM into casein or caseinate shall be borne by the contractor.

4. INDEPENDENT PRICE CERTIFICATION

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

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

B. Each person signing the offer thereby certifies that:

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

- (1) The offeror is not the person in their organization responsible within that organization for the decision as to prices being offered but has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to subparagraphs A. (1) through A. (3) of this section, and as their agent does hereby so certify; and
 - (2) The offeror has not participated, and will not participate, in any action contrary to subparagraphs A. (1) through A. (3) of this section.
- C. An offer will not be considered for acceptance where subparagraphs A. (1), A. (3) or B. of this section have been deleted or modified. Where subparagraph A. (2) of this section has been deleted or modified, the offer will not be considered for acceptance unless offeror furnishes with the offer a signed statement which sets forth in detail the circumstances of the disclosure and the Contracting Officer determines that such disclosure was not made for the purpose of restricting competition.

5. ACCEPTANCE OF OFFERS

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

6. PROVISIONS OF CONTRACT

- A. The contract consists of:
 - (1) Contractor's offer.
 - (2) CCC's acceptance.
 - (3) The applicable invitation.
 - (4) This Announcement, including Appendix 1.
- B. If the provisions of this Announcement and the invitation are not consistent, those of the invitation will prevail.
- C. No interpretation or amendment of this Announcement is valid or enforceable unless such interpretation or amendment is in writing and executed by the Contracting Officer. No other determination or opinion

shall be a contract interpretation even if it came from another USDA official.

7. WARRANTY AND COMPLIANCE

- A. It is expressly understood that the NDM sold under this Announcement is restricted for conversion into edible dry acid or rennet casein or dry caseinate. Edible dry casein or caseinate shall comply with all Federal, State and Local laws and regulations including the Federal Food, Drug and Cosmetic Act.
- B. By submitting an offer, the offeror agrees to manufacture all of the NDM into edible casein or caseinate not later than 90 days following the date of the contract, and warrants that the NDM will not be used, distributed or resold for any other purpose. In the event offeror has never performed a field test to convert NDM into edible casein or caseinate, offeror agrees that, if they are awarded a contract, they will perform required field tests and submit the written reports within 60 days following the date of the contract. If the contractor successfully converts the NDM to casein or caseinate as specified by the field test, they will have 90 days from the date offeror is notified by CCC of successful completion of the field test to convert the balance of the NDM into casein or caseinate. Also, offeror agrees that the manufacture of the NDM into casein or caseinate shall be performed in plants, which are located in the United States and owned by the offeror. CCC retains the right to review or inspect the plant at any time.
- C. Any by-product resulting from the conversion of NDM into casein or caseinate shall become the property of the Contractor together with the responsibility for its disposition in accordance with any applicable food, feed or environmental regulations.
- D. Within 15 calendar days of completing the contract, the contractor shall submit a performance report to CCC indicating the contract number, number of pounds of NDM purchased, date received, pounds of NDM used for conversion into casein or caseinate, date casein/caseinate shipped, and name of the company that received the casein/caseinate. The report shall be certified by an officer of the company. The certification must include the following statement: "This certification is executed with full knowledge of the provision of 15 U.S.C. 714m(a), for making any statement knowing it to be false, for the purpose of influencing in any way the action of the United States Department of Agriculture." The manufacturer will be responsible to maintain records of inventory, accounting and manufacturing of casein or caseinate produced. CCC retains the right to inspect, review and request these records at any time.
- E. For the purposes of this announcement, casein and caseinate are defined as follows:

1. Edible dry casein (acid) is the pulverized or unpulverized product resulting from washing, drying or otherwise processing the coagulum resulting from acid precipitation of reconstituted skim milk which has been pasteurized before or during the process of manufacturing.
2. Edible dry casein (rennet) is the pulverized or unpulverized product resulting from washing, drying or otherwise processing the coagulum resulting from coagulation by rennet of reconstituted skim milk which has been pasteurized before or during the process of manufacturing.
3. Edible caseinate is the dry product obtained by combining edible casein or fresh edible casein curd with food grade neutralizing agents and which has been pasteurized before or during the process of manufacture.

8. QUANTITY

The weight of each warehouse lot shall be evidenced by the weight shown on the shipping instructions issued by CCC or by the most recent certificates issued by the Dairy Grading Branch, Dairy Programs of USDA's Agricultural Marketing Service (AMS). If the quantity delivered differs from the quantity contracted for, because the number of containers delivered differs from the number shown on the above documents, payment will be adjusted on the basis of the contract price per pound, and reimbursement to the Contractor in the case of shortage, or payment to CCC in the case of over-delivery, shall be made promptly. Claims for shortages must be supported by document(s) acceptable to CCC.

9. FINANCIAL ARRANGEMENTS

- A. Within 5 business days after the date of the contract, payment for the NDM must be received in KCCO by one of the following methods:

- (1) Wire transfer of funds from contractor's bank:

Federal Reserve Bank (NYC, NY)
 ABA#0210-3000-4
 BNF=/AC-4992
 OBI=CCC/KCCO-(CONTRACT NO.)
 Company Name

- (2) Certified check or cashier's check made payable to CCC.

Express Delivery Service:

FSA/FSC
 RMO/COSG - Mail Stop 8212
 6501 Beacon Drive
 Kansas City, MO 64133-4676 (HOURS 7:00 AM – 5:00 PM)

Regular mail:

FSA/FSC
RMO/COSG – Mail Stop 8212
P.O. Box 419205
Kansas City, MO 64141-6205

- B. If payment has not been made within 5 business days after the date of contract, interest at the rate per annum specified by CCC in effect at the time the offer is accepted by CCC shall be paid by the contractor to CCC from the day after the date of the contract to the date payment is received by CCC.
- C. Notwithstanding paragraph 9. B., at the election of CCC, if the Contractor fails to make arrangements for payment in accordance with this section, all of the Contractor's rights under the contract may be terminated by CCC, and CCC may proceed against the Contractor to recover any damages CCC may have sustained.

10. DELIVER, TRANSFER OF TITLE, AND STORAGE COSTS

- A. CCC will deliver the NDM to the Contractor in-store at the named point(s) of storage in the contract as soon as possible after payment is received by CCC. CCC will issue to the warehouse operator a Notice to Deliver to transfer the NDM to the Contractor once payment is received. The original of the Notice to Deliver will be mailed to the warehouse operator and a copy will be mailed to the Contractor. The date of mailing the Notice to Deliver shall be the date of issuance.
- B. CCC shall be responsible for any storage charges accruing up to and including the fifth business day following the date of issuance of the Notice to Deliver or until the NDM is loaded out, which ever is earlier. Any storage, handling, or other warehouse charges accruing thereafter shall be for the account of the Contractor. Notwithstanding the foregoing, any prepaid warehouse charges, including loading-out charges, on any lot of the NDM delivered to the Contractor shall accrue to the benefit of the Contractor.
- C. Title and risk of loss shall pass to the Contractor when the NDM is delivered to the Contractor.

11. FAILURE TO PERFORM, LIQUIDATED DAMAGES AND DEFAULT

- A. NDM, which was acquired under the Dairy Product Price Support Program, is being sold only for the manufacture of edible casein or caseinate under this Announcement. The failure by the Contractor to manufacture edible casein or caseinate from the NDM may result in the purchase by CCC of additional quantities of NDM under the price support program. Since it will be difficult to prove the amount of damage to CCC in the event of breach of the Contractor's warranty herein contained, the Contractor shall pay to CCC by way of

compensation as liquidated damages, and not as penalty, the amount by which such sales price is exceeded by:

- (1) The purchase price paid for the NDM by CCC at the time of purchase, or;
 - (2) The market price the NDM would have at time of sale as determined by CCC when there is no announced sales price, whichever of the foregoing is the highest. It is mutually agreed that the damages provided for by this paragraph are reasonable estimates of probable actual damages. The Contractor agrees to pay such damages upon demand.
- B. Failure of the Contractor to convert the NDM within the period permitted in Paragraph 7. B. and in accordance with the provisions of that paragraph will cause added administrative costs for the NDM which are not under the direct control of CCC. Since these costs and other possible damages would be difficult, or impossible to compute the Contractor shall pay to CCC by way of compensation as liquidated damages and not as a penalty for each thirty day period of delay or fraction thereof up to a maximum of 90 days at the rate of \$0.20 per 100 pounds net for all NDM not converted into edible dry casein or caseinate.
- C. After 90 days of delay beyond the period permitted for conversion in accordance with Paragraph 7. B., CCC may find the contractor in default and repossess the NDM and offer it for resale under this Announcement and in addition to liquidated damages assessed, hold the Contractor liable for any damages sustained by reason of such resale. CCC will return to the Contractor the purchase price for the NDM resold less such damages.
- D. If Contractor determines that it will not be able to manufacture into casein or caseinate, the NDM within the period permitted in Paragraph 7.B., Contractor shall inform Contracting Officer as soon as feasible, indicating how soon it expects to be able to manufacture the NDM into casein or caseinate. Each week thereafter until all late manufacturing is complete, Contractor shall inform Contracting Officer how soon in expects to be able to manufacture the NDM into casein or caseinate.

12. DISPUTES

- A. Any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy to the Contractor. The decision of the Contracting Officer shall be final and conclusive. However, the Contractor may appeal to the Civilian Board of Contract Appeals within 30 days from the date of receipt of the Contracting Officer's decision. Appeals should be filed with the Clerk of the Civilian Board of Contract Appeals, 1800 F Street, N.W., Washington, D.C. 20405. Other methods of filing and further information on appeals can be obtain from the Board at <http://www.cbca.gsa.gov/>. The Contractor shall mail or otherwise

furnish to the Contracting Office a copy of the appeal filed. The decision of the Civilian Board of Contract Appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this paragraph, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision hereunder of a dispute, if performance under the contract has not been completed by the Contractor or terminated by CCC, Contractor shall proceed diligently with performance of the contract and in accordance with the Contracting Officer's decision.

- B. This "Disputes" section does not preclude consideration of any questions of law in connection with decisions provided for in paragraph 12.A. above. Provided, that nothing in the contract shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.
- C. If an appeal is filed by Contractor from a final decision of the Contracting Officer under this Disputes section denying a claim arising under the contract, simple interest in the amount of the claim finally determined owed by CCC shall be payable to Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date Contractor furnishes to the Contracting Officer his written appeal under this Disputes paragraph, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a Board of Contract Appeals.
- D. Notwithstanding 12.C. above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of an appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determined Contractor has unduly delayed in pursuing remedies before the Board of Contract Appeals or a court of competent jurisdiction.

13. ASSIGNMENTS

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

14. INQUIRIES

Inquiries pertaining to this announcement should be directed to:

Kansas City Commodity Office
Commodity Management Division
P.O. Box 419205
Stop 8748
Kansas City, MO 64141-6205
816-926-3816

/s/ Steven L. Sanders

Steven L. Sanders
Director, Kansas City Commodity Office

APPENDIX 1

Sales Offer Form

ANNOUNCEMENT RSCS2

Sale of Nonfat Dry Milk

for the Manufacture of Casein or Caseinate



KC-327-RSCS (11-04) SALES OFFER FORM	ANNOUNCEMENT NO. RSCS2	INVITATION NO.	OFFEROR NAME	PAGE 1
Subject to the terms and conditions of this invitation, Announcement RSCS2, the undersigned offers to purchase CCC-owned Nonfat Dry Milk (NDM) at the price quoted below and manufacture the NDM, in the plant(s) named in this offer into edible dry casein or edible dry caseinate, or edible dry milk protein isolate 90% or higher, hereinafter may be referred to as "dry product".				

1. Name and location of manufacturing plant:

(Name) (Address) (City/State/ZIP)

2. Name and location of drying plant (if different from manufacturing plant):

(Name) (Address) (City/State/ZIP)

3. Total quantity of dry product manufactured by the above plant(s) in the last year _____ pounds.

4. The above plant has ☐ has not ☐ successfully completed USDA field test to manufacture NDM into dry product.

5. Existing monthly capacity of above plant(s) to manufacture NDM into dry product _____ pounds of NDM.

6. Total quantity offered _____ pounds of NDM.

7. Bid price in U.S. dollars per pound of NDM \$ _____.

8. Timely Performance (Check One)

A. The offeror has ☐ has not ☐ paid for all products under contracts with CCC that have a payment due date prior to this bid opening.

B. The offeror has ☐ has not ☐ converted all NDM under contracts with CCC that have a conversion deadline prior to this bid opening.

C. The offeror has ☐ has not ☐ provided reports required under contracts with CCC.

9. INDEPENDENT PRICE CERTIFICATION

Check appropriate certification for either subparagraph 4. B. **OR** 4. B. (1) and (2) of Announcement RSCS2.

☐ B. The offeror is the person in their organization responsible within that organization for the decision as to the prices being offered and has not participated, and will not participate, in any action contrary to subparagraphs A.(1) through A.(3) of Announcement RSCS2, OR

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

(2) The offeror has not participated, and will not participate, in any action contrary to subparagraphs A.(1) through A.(3) of Announcement RSCS2.

KC-327-RSCS (11-04) SALES OFFER FORM	ANNOUNCEMENT NO. RSCS2	INVITATION NO.	OFFEROR NAME	PAGE 2
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10. Offeror acknowledges receipt of amendments to **invitation (if applicable)** by entering the amendment number and date.

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

The certifications, warranties, and representations as set forth in this invitation are hereby made.		
IN WITNESS WHEREOF, the undersigned has executed this offer this _____ day of _____, 20____.		
NAME OF FIRM		
SIGNATURE		TITLE
Typed Name of the Officer or Employee Responsible for the Offer:		
TYPE OF FIRM (Corporation, Partnership, or Sole Proprietorship)		
ADDRESS		
CITY		STATE ZIP CODE
E-MAIL ADDRESS	FAX NO.	TELEPHONE NO.
AFTER HOURS CONTACT (Name)		TELEPHONE NO.

OMB Exempt

[illegible]

KC-327-RSCS (11-04) SALES OFFER FORM	ANNOUNCEMENT NO. RSCS2	INVITATION NO.	OFFEROR NAME	PAGE 4
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MARKET PRICE ADJUSTMENTS

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

TO:	CCC USE ONLY – Bidder No.
USDA-FSA-KCCO Kansas City, MO Attn: COMMODITY MANAGEMENT DIVISION BID BOX Fax: 816-926-6381 or 816-926-6767	

COMPANY NAME	COMPANY LOCATION

PLEASE ADJUST THE PRICES AS FOLLOWS:

LINE	LOCATION/ ITEM NUMBER	PRICE		VENDOR'S USE ONLY Commodity Type
		INCREASE	DECREASE	
Example	ALL LOCATIONS	\$0.10		NDM
1				
2				
3				
4				
5				

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

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PRIVACY ACT AND PUBLIC BURDEN STATEMENTS

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

The authority for collecting the following information is Public Law 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of Discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.