



**United States
Department of
Agriculture**

July 23, 2004

Farm and Foreign
Agricultural Services

Farm Service
Agency

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

TO: DOMESTIC CRACKER SUPPLIERS

Amendment 2 to Announcement CR2, Purchase of Crackers for Use in Domestic Programs, updates or changes the following contract terms and conditions:

- Eligibility Requirements for Offerors
- Submission of Offers
- NAICS Code
- Commodity Specifications
- Commercial Packaging and Marking Specifications.

Announcement CR2 and Amendment 2 are also available at the Commodity Operations website www.fsa.usda.gov/daco/default.htm under Domestic Announcements.

Effective date of this amendment is July 23, 2004 , and is applicable to all contracts awarded on or after date of issuance.

Any inquiry pertaining to the amendment should be directed to Hilda Foster at 816-926-6654.

/s/

Steven P. Miteff
Acting Director

Enclosure

**UNITED STATES
DEPARTMENT OF
AGRICULTURE**

EFFECTIVE: March 1, 2001

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

ANNOUNCEMENT CR2

**PURCHASE OF
CRACKERS**

FOR USE IN DOMESTIC PROGRAMS



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**ANNOUNCEMENT CR2
PURCHASE OF CRACKERS
FOR USE IN DOMESTIC PROGRAMS**

1. GENERAL

A. Invitation for Offers

- (1) The United States Department of Agriculture (USDA) will from time to time issue an invitation for offers under this announcement to sell crackers (hereinafter referred to as crackers or product) to USDA for use in domestic programs.
- (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.

B. Terms and Conditions

- (1) Provisions of "General Terms and Conditions for the Procurement of Agricultural Commodities or Services," USDA-1, Revision No. 2, as amended (USDA-1), are incorporated as specified in Section 6 of this announcement.
- (2) Offerors are cautioned to read all terms and conditions of USDA-1, TQSA Supplier Guidelines, this announcement, the appendixes to this announcement, and the invitation.

C. Certifications, Representations, and Warranties

Appendix 1 to this announcement contains certifications, representations, and warranties that must be certified and submitted annually to USDA prior to or with an offer. In addition to an annual submission, offerors must submit an updated Appendix 1 as changes in the certifications, representations, and warranties submitted to USDA occur throughout the year.

D. Commercial Item Description

Appendix 2 to this announcement is the Commercial Item Description (CID) for **CRACKERS, A-A-20286, dated June 15, 1998.**

2. ELIGIBILITY OF OFFERORS

- √.. A. To be eligible to submit an offer under this announcement, the offeror must demonstrate its ability to meet the prescribed standards specified in the agency's qualification requirements located at www.fsa.usda.gov/daco. This process will determine that a potential vendor has the quality, fitness, capacity, and experience to satisfactorily perform the proposed work and has demonstrated the requisite trustworthiness. USDA reserves the right to adjust, limit, suspend or rescind any potential vendor who has been deemed qualified and placed on the agency's Qualified Bidders List based on any subsequent learned information. USDA reserves the right to waive any minor irregularity and/or omission in the information contained in the qualification application that has been submitted. ..√
- B. Meet the definitions of a manufacturer or nonmanufacturer as defined below:
- (1) Manufacturer means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - (2) Nonmanufacturer means a person that is primarily engaged in the wholesale or retail trade and normally sells the items being supplied to the general public, and will supply the end item of a small business manufacturer or processor made in the United States, or obtain a waiver of such requirement pursuant to 13 C.F.R. 121.406.
- C. Maintain a bona fide business office in the United States for the purpose of selling to USDA the product described in this announcement. Additionally, the offeror must maintain an office, employee, or agent for service of process.
- √.. D Meet the requirements of the Total Quality Systems Audit (TQSA) program. Offerors shall be allowed to offer only from plants that have received an audited score of at least 80 points (exclusive of any major non-conformances in any item of the TQSA Report Form TQ-003). A result of one major non-conformance in any item resulting in a Corrective Action Request (CAR), or three or more minor non-conformances in a section would preclude participation in commodity purchase programs until such time corrective action is determined, implemented, and verified as effective. The Contracting Officer will make all final decisions regarding corrective action compliance. Total Quality Systems Audit Supplier Guidelines setting forth the TQSA requirements may be obtained at www.fsa.usda.gov/daco/pdd/tqsa.htm or by contacting the appropriate Contracting Officer. ..√

3. SUBMISSION OF OFFERS

√.. Central Contractor Registration Requirements

Vendors doing business with USDA are required to register in the Central Contractor Registration (CCR) before being awarded contracts. By submission of an offer, the Offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database. If the offeror is not registered in the CCR database at the time of bid opening, offers will be deemed non-responsive. ..√

√ ..Assignee shall be separately registered in the CCR database. Once a contract has been awarded, the contractor shall not change the name or address for Electronic Funds Transfer (EFT) payments in the CCR record for the purpose of assignment of claims.

Offeror may obtain information on CCR registration and annual confirmation requirements at www.ccr.gov or by calling 1-888-227-2423 or 269-961-5757. ..√

B. How to Submit Offers

Offers, modifications, withdrawals of offers, and price adjustments shall be submitted through the Domestic Electronic Bid Entry System (DEBES) and received by the date and local time specified in the invitation for receipt of offers. The time of receipt will be determined and recorded by DEBES. Submission of the above by any means other than DEBES will be determined nonresponsive.

C. Computer Software Requirements

The contractor is responsible for choosing their own Internet Service Provider (ISP) to transmit, translate, or carry data between the offeror and this office. The offeror is responsible for the cost of its third-party network.

√ ..(1) Browser requirement: Netscape version greater than 4.07 and less than 6.0 **(OR)** Internet Explorer 5.0 or above. ..√

(2) Encryption: Browser capable of handling 128-bit encryption.

(3) Proxy servers: Offerors must set up their proxy server to allow access to the Internet DEBES port.

D. Access to DEBES

(1) Port location is: <https://pcsd.usda.gov:3077/mdbc1000.exe?>

(2) This office will provide the offeror with an ID number and the initial password needed to access DEBES.

(3) USDA will not be responsible for any failure attributed to the transmission of the bid data prior to being accepted and stored on our web server including, but not limited to the following:

(a) Any failure of the offeror's computer hardware or software .

(b) Availability of your Internet service provider.

(c) Delay in transmission due to the speed of your modem .

(d) Delay in transmission due to excessive volume of Internet traffic.

(4) DEBES offer form bid page. The Trans (transportation) Mode on the DEBES offer form bid page will default to truck. Offerors may select the rail or piggyback mode for each item if applicable. Offerors designated mode of transportation will become a contract requirement and may not change without prior approval from this office.

D. Late Submission and Modification

Any offer submitted to DEBES after the designated time specified for receipt in the invitation will not be considered. Notwithstanding the above, a late modification of an otherwise successful bid that makes its terms more favorable to the government will be considered at any time it is received and may be accepted. For the purpose of this announcement, USDA-1, Articles 6 and 7 are excluded.

E. Basis of Offer

Offers are invited f.o.b. destination. Certain destinations require delivery by TRUCK ONLY or RAIL ONLY. Destinations asterisked together in the invitation indicate carlot combinations, and offers are requested for delivery to all points indicated in the combination. Offerors may rearrange destination sequence on carlot combinations provided the offer is for all parts of the carlot combination. A single price shall be offered for each item. Offers for less than quantity requested per item will not be accepted. **USE OF OPEN VAN CARRIERS IS NOT ALLOWED.**

4. ACCEPTANCE OF OFFERS

- A. USDA will notify successful offerors on the date specified in the invitation. The date of acceptance by USDA will be the contract date.
- B. In addition to the price, factors considered in accepting offers will include the time of shipment, the total cost to the Government to deliver the product to the ultimate destination, and the responsibility of the offeror as demonstrated by prior contract performance.
- C. USDA may accept or reject any or all offers, or portions thereof.

5. RESPONSIBILITY AND PAST PERFORMANCE OF OFFEROR

- A. Offerors are cautioned not to bid on product quantities exceeding a level that the offeror can reasonably expect to deliver in accordance with the contract schedule. Deliveries must be made during the contracted delivery period and no extensions will be granted due to weekends or Federal holidays. On time delivery is imperative because this product is used in domestic food programs. Late deliveries cause serious and substantial damages to USDA and to other agencies that use this commodity. Contractor delivering late on contracts must immediately notify the contracting officer of late deliveries and how soon delivery can be expected.
- B. The offeror must certify to timely performance on current contracts on the DEBES certification form. A determination that the late performance is beyond the control or negligence of the contractor will be made by the contracting officer prior to bid opening. An offeror may be deemed nonresponsible if the offeror is delivering late on contracts with USDA and the late delivery is not due to causes beyond the contractor's control. This provision, as it pertains to small business, is a deviation from FAR 9.103(b) and Subpart 19.6.

6. PROVISIONS OF CONTRACT

- A. The contract consists of:
- (1) Contractor's offer.
 - (2) USDA's acceptance.
 - (3) The applicable invitation.
 - (4) This announcement, including Appendixes 1-2.
 - (5) TQSA Supplier Guidelines.
 - (6) USDA-1, except Articles 50 and 55 and all of Part E. Articles 56, 65, and 67 are applicable, except that contracts will be executed on a delivery basis. All words referring to "ship," "shipping," "shipments," and "shipped" shall be "deliver," "delivering," "delivery(ies)," and "delivered."
- B. If the provisions of USDA-1, TQSA Supplier Guidelines, and this announcement are not consistent, the provisions of this announcement will prevail. If the provisions of USDA-1, TQSA Supplier Guidelines, 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.

7. NAICS CODE AND SMALL BUSINESS SIZE STANDARD

- √.. A. The North American Industry Classification System (NAICS) code for this acquisition and the small business size standard is:

COMMODITY	NAICS CODE	SIZE STANDARD (EMPLOYEES)
Crackers	311821	750

..√

- B. The small business size standard for a concern which submits an offer in its own name, but which proposes to furnish a product which it did not itself manufacture is 500 employees.

8. RESPONSES TO ILLEGAL OR IMPROPER ACTIVITY

- A. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity
- (1) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the

Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may:

- (a) Cancel the solicitation, if the contract has not yet been awarded or issued; or
- (b) Rescind the contract with respect to which:
 - 1) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either:
 - a) Exchanging the information covered by such subsections for anything of value; or
 - b) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
 - 2) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.
- (2) If the Government rescinds the contract under paragraph A. (1) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (3) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

B. Price or Fee Adjustment for Illegal or Improper Activity

- (1) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph B. (2) of this clause if the head of the contracting activity or designee determine that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (2) The price or fee reduction referred to in paragraph B. (1) of this clause shall be:
 - (a) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (b) For cost-plus-incentive-fee-contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

- (c) For cost-plus-award-fee contracts:
 - 1) The base fee established in the contract at the time of contract award;
 - 2) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the contractor for each award fee evaluation period or at each award fee determination point.
 - (d) For fixed-price-incentive contracts, the Government may:
 - 1) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - 2) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the contracting officer may defer such adjustment until establishment of the total final price of the contract. The total final prices established in accordance with the incentive price revision provisions of the contract award and such reduced price shall be the total final contract price.
 - (e) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the contracting officer from records or documents in existence prior to the date of the contract award.
- (3) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph B. (2) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
 - (4) In addition to the remedies in paragraphs B. (1) and B. (3) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

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

- A. The Government suspends or debar 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 (FAR 9.405).
- 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 (See FAR 9.404 for information on the List of Parties Excluded from Federal Procurement Programs). 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.

10. COMMODITY SPECIFICATIONS

A. Domestic Origin

- (1) The product 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
√ its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as the United States). Components originating in the United States that 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 contractor must maintain records to verify that during the contract delivery period, at the point of packaging or, at the point of delivery to USDA, the product, containers and packaging materials were in compliance with the domestic origin requirements of this section of the announcement. (See Article 76 of USDA-1).
- (4) USDA will randomly conduct domestic origin compliance reviews to determine if the product delivered to USDA was produced and manufactured in the U.S. from materials produced and manufactured in the U.S. Upon request, the contractor 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 USDA.

B. Commercial Product Specifications

- (1) Contractors are to supply commercial labeled products only. Contractors must certify and fully demonstrate that the product being delivered has a history of successful distribution and

use in domestic commercial channels, and is sold on the commercial marketplace with an established level of consumer acceptance prior to the initial bid. The product delivered shall comply with all applicable Federal and State mandatory requirements and regulations relating to the preparation, processing, packaging, labeling, storage, distribution and sale within the commercial marketplace.

- (2) The product must conform in every respect to the provisions of the “Federal Food, Drug, and Cosmetic Act,” as amended, and the regulations promulgated thereunder, including any Defect Action Level guidelines issued by the Food and Drug Administration (FDA) which may be applicable to this product. Any product with counts in excess of the FDA Defect Action Level guidelines shall not be shipped.
- (3) Commercial brand crackers must comply with Commercial Item Description A-A-20286, dated June 15, 1998 (see Appendix 2).
- (4) Warranty. The crackers must have a shelf life of at least six months from date of manufacture. Product must not be manufactured more than 30 days prior to shipping. Contractor must replace defective commodity with an equal quantity of commodity which conforms to all contract requirements and specifications, provided replacement is agreed to by USDA.
- (5) The product delivered must comply with the domestic origin requirements as specified in Section 10, paragraph A.

C. Subject to the provisions of Articles 60 and 68 of USDA-1, product which deviates from the specifications of this contract will be rejected.

11. COMMERCIAL PACKAGING AND MARKING SPECIFICATIONS

A. Container and packaging requirements for commercial products are those used in the current commercial shipping practices and must comply with the following unitization requirements:

(1) Unless otherwise specified by USDA, all shipments of packaged products must be unitized (palletized and stretch wrapped).

(2) Pallets must be:

√.. (a) A number 2, 4-way, reversible flush stringer which contains no broken runners or slats. ..√

(b) Constructed to facilitate the safe handling, stacking, and transportation of the packaged product, as a unit, without loss or damage.

(c) Suitable for use in the shipment of food products.

(3) Plastic stretch wrap must be:

(a) Constructed of a plastic film which is to be stretched a minimum of 50 percent beyond its original length when stretched around the pallet load.

(b) Applied as tightly as possible around all tiers of the palletized shipping containers. The

shipping containers must be held firmly in place by the stretch wrap.

(4) Pallet loads must be:

- (a) Stacked in such a way as to minimize the amount that shipping containers overhang the edges of pallets. (While shipping containers may overhang the edges of pallets, contractors are reminded that they are responsible for the safe shipment and delivery of the product.)
- (b) Blocked and braced or otherwise loaded into the conveyance in a manner that prevents shifting during transit.

- B. The marking and labeling for commercial products must be in accordance with good commercial practices.
- C. At contractor's option a statement such as "NOT FOR RETAIL SALE" may be printed on the principal display panel of the food label.
- D. The manufacturer's lot code/lot identification number must be shown on the commercial bill of lading.
- E. All containers and packaging materials must be manufactured and assembled in the United States. The components that make up the fabricating materials of the containers and packaging materials must be of U.S. origin to the extent that they are commercially available.

12. QUALITY ASSURANCE

- A. The contractor must perform the product testing and quality analysis to ensure that the product meets the specifications described in Section 10 B. The results must be evidenced by a Certificate of Analysis. The contractor must retain the Certificates of Analysis and furnish to USDA upon request. Contractors are required to notify KCCO immediately of lots that fail to meet contract requirements.
- B. Contractor must not ship the product unless the containers and markings meet the Acceptable Quality Level (AQL) of the "U.S. Standards for Condition of Food Containers." Except with respect to shipments that do not meet the AQL standards, and notwithstanding Article 56(b) of USDA-1, contractor assumes all risks and liabilities that arise with respect to the failure of the shipped product to meet contract specifications.
- C. The TQSA program is a method of contractor verification and shall not relieve contractors of their responsibility to deliver a product which complies with all contractual and specification requirements.
- D. If the contractor becomes TQSA non-compliant after the contract is awarded and through execution of contract, the contracting officer may terminate contract for default.

13. SHIPMENT AND DELIVERY

- A. Shipment and delivery must be made in accordance with this announcement and Articles 56 and 64 of USDA-1.
- B. Title and risk of loss will pass to USDA on the date of delivery, as evidenced by a signed and dated consignee's receipt, warehouse receipt, dock receipt, or other similar document acceptable to USDA.
- C. The quantity of the product delivered in good condition must be evidenced by a signed and dated consignee's receipt, warehouse receipt, dock receipt, or other similar document acceptable to USDA, and such document must be retained by the contractor.
- D. Contractors are required to make **TWO** notifications for each shipment (See Article 56(c) of USDA-1):
 - (1) The State Agency, "Consign To" party shown on the Notice to Deliver (N/D), must be **FAXED** on day of shipment.
 - (2) The receiving warehouse, "Care Of" party shown on the N/D, must be called 24 hours in advance to schedule an unloading appointment. (This is not required for rail shipments.) Contractors must notify the contracting officer in advance if deliveries will not be made by the final delivery date under the contract, in accordance with Article 67(a) of USDA-1.
- E. Consignees may request upgrading of delivery service; for example, delivery within the doors of the consignee's premises or to a specific room within a building. Contractors are alerted that such delivery terms are beyond contractual requirements. If an upgrade of delivery services is requested and agreed to, additional charges must be billed to the party requesting the service.

14. LIQUIDATED DAMAGES

A. Compensation to Contractor for Late Issuance of Notice to Deliver

Liquidated damages for delay in delivery due to late issuance of "Notice to Deliver" (KC-269), will be payable in accordance with Article 65 of USDA-1, and will be at the rate of \$0.30 per 100 pounds (net weight) per day.

B. Compensation to USDA for Delay in Delivery

Liquidated damages for delay in delivery will be payable in accordance with Article 67 of USDA-1, and will be at the rate of \$0.30 per 100 pounds (net weight) per day.

15. INVOICES AND PAYMENT

- A. Invoicing and payment will be handled in accordance with Article 70, USDA-1 except that a properly prepared invoice package must include the following supporting documents:

- (1) A signed and dated Form KC-269 (reverse side) which includes the ``Contractor's Invoice Certification'' evidencing the date of delivery and quantity (units) delivered in good condition, OR
- (2) 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 provision of 15 U.S.C. 714m(a), which provides a fine of not to exceed \$10,000 or imprisonment of not more than five years or both, 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, and with full knowledge of the provisions of 31 U.S.C. 3729 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

- (3) Commercial bill of lading.
- (4) If the contractor does not complete a ``Contractor's Invoice Certification,'' then proof of delivery as evidenced by one or more of the following documents will be required as part of the invoice package:
 - (5) A copy of the Bill of Lading signed and dated by the recipient.
 - (6) A copy of the commercial receipt evidencing delivery signed and dated by the recipient.

B. Invoices must be mailed to:

Kansas City Finance Office
 Financial Operations Division, Payment Certification Branch
 Stop Code 8578
 P.O. Box 419205
 Kansas City, MO 64141-6205

- C. 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 may be made directly to a financial banking institution. To receive payments electronically, Standard Form 3881, ACH Vendor/Miscellaneous Payment Enrollment Form must be completed. If you have questions or would like these forms mailed to you, contact Financial Operations Division, Payment Certification Branch.

16. INQUIRIES

Inquiries pertaining to USDA-1 and this announcement should be directed to:

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

Steven P. Miteff
Acting Director
Kansas City Commodity Office

UNITED STATES
DEPARTMENT OF
AGRICULTURE

EFFECTIVE: January 1, 2004

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

APPENDIX 1

Representations, Certifications, and Other Statements of Offerors or Respondents for

DOMESTIC COMMODITY PROCUREMENTS

<http://www.fsa.usda.gov/daco/Announcement/Domestic/Appendix1.pdf>



**APPENDIX 1
 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS
 OF OFFERORS OR RESPONDENTS**

These certifications concern matters 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 the United States Code, including Title 18, U.S.C., Section 1001 and Title 15, U.S.C., Section 714M.

The certifications, representations, and warranties listed in this appendix are required for submission of offers. The Kansas City Commodity Office (KCCO) will retain this appendix on file as the offeror's certifications, representations, and warranties for subsequent invitations for offers under the announcement(s) checked in the table below. By submitting an offer under the announcement(s) checked as applicable by the offeror in the table below, the offeror certifies and warrants that the appendix on file with KCCO contains the current status of the offeror. Offerors are responsible for updating this appendix as may be necessary prior to, or with any applicable offer submission by the offeror.

DOMESTIC ANNOUNCEMENTS		NAICS CODE	SIZE STANDARD
(√) CHECK APPLICABLE ANNOUNCEMENTS			NO. OF EMPLOYEES
BF	Bakery Flour Products	311211	500
	Bakery Mix (Required Federal Source only)	311822	500
CP	Corn Products	311211	500
CR	Cracker Products	311821	750
FC	Fortified Cereal Products	311230	1000
MC	Macaroni and Cheese Products	311823	500
PA	Pasta Products	311823	500
PC	Processed Cereal Products	311230	1000
PP	Peanut Products	311911	500
RC	Instant Rice Cereal	311230	1000
RP	Rice Products	311212	500
SSB	Sunflower Seed Butter	311223	500
VP	Vegetable Oil Products	311222	500
	Vegetable Oil and Liquid Shortening	311222	500
	Salad Dressing	311941	500
WF	Wheat Flour Products	311211	500

Part A - Index of Federal Acquisition Regulation (FAR) Clauses

- Section 1 FAR 52.203-2--Certificate of Independent Price Determination (Apr 1985)
- Section 2 FAR 52.203-5--Covenant Against Contingent Fees (Apr 1984)

Section 3	FAR 52.203-11--Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Apr 1991)
Section 4	FAR 52.204-3--Taxpayer Identification (Oct 1998)
Section 5	FAR 52.204-5--Women-Owned Business (Other Than Small Business) (May 1999)
Section 6	FAR 52.209-5--Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Dec 2001)
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Part B FAR Clauses

Section 1- FAR 52.203-2--Certificate of Independent Price Determination (Apr 1985)

As prescribed in FAR 3.103-1 (if the solicitation is a Request for Quotations, the terms “Quotation” and “Quoter” may be substituted for “Offer” and “Offeror”):

(a) The offeror certifies that --

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to --

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

(1) Is the person in the offeror’s organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision

[insert full name of person(s) in the offeror’s organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror’s organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies subparagraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

Section 2 - FAR 52.203-5—Covenant Against Contingent Fees (Apr 1984)

As prescribed in FAR 3.404:

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee,” as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

Section 3 - FAR 52.203-11--Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Apr 1991)

As prescribed in FAR 3.808:

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief

that on or after December 23, 1989 --

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

Section 4 - FAR 52.204-3--Taxpayer Identification (Oct 1998)

As prescribed in FAR 4.905, complete the following provision:

(a) Definitions.

“Common parent,” as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

“Taxpayer Identification Number (TIN),” as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

- TIN: _____
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other _____

(f) Common parent.

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
- Name and TIN of common parent:

Name: _____

TIN: _____

Section 5 - FAR 52.204-5--Women-Owned Business (Other Than Small Business) (May 1999)

As prescribed in FAR 4.603(b), complete the following provision, if applicable:

(a) *Definition.* "Women-owned business concern," as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, *Small Business Program Representations*, of this solicitation.] The offeror represents that it [] is a women-owned business concern.

Section 6 - FAR 52.209-5--Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Dec 2001)

As prescribed in FAR 9.409(a), complete the following provision:

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

(B) Have [] 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, or receiving stolen property; and

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

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

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, 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.

Section 7 - FAR 52.219-1--Small Business Program Representations (Apr 2002)

As prescribed in FAR 19.307(a)(1), complete the following provision:

(a) (1) The North American Industry Classification System (NAICS) code for applicable solicitations is indicated by the box or boxes selected on page 1.

(2) The small business size standard is indicated by the box or boxes as selected on page 1.

(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) *Representations.*

(1) The offeror represents as part of its offer that it is, is not, a small business concern.

(2) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents, for general statistical purposes, that it is, is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents as part of its offer that it is, is not, a women-owned small business concern.

(4) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents as part of its offer that it is, is not, a veteran-owned small business concern.

(5) *[Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.]* The offeror represents as part of its offer that it is, is not, a service-disabled veteran-owned small business concern.

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that--

(i) It [] is, [] is not, a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [] is, [] is not, a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.]

Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(c) *Definitions.* As used in this provision--

"Service-disabled veteran-owned small business concern"--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

"Veteran-owned small business concern" means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.*

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

- (i) Be punished by imposition of fine, imprisonment, or both;
- (ii) Be subject to administrative remedies, including suspension and debarment; and
- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

Section 8 - FAR 52.222-22--Previous Contracts and Compliance Reports (Feb 1999)

As prescribed in FAR 22.810(a)(2), complete the following provision:

The offeror represents that--

- (a) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It has, has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

Section 9 - FAR 52.222-25--Affirmative Action Compliance (Apr 1984)

As prescribed in FAR 22.810(d), complete the following provision:

The offeror represents that--

(a) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

Part C Additional Certifications

1. Manufacturer (*Check One*)

Offeror represents and certifies that it is, is not, a manufacturer.

Manufacturer means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. Nonmanufacturer (*Check One*)

Offeror represents and certifies it is, is not, a nonmanufacturer.

Nonmanufacturer means a person that is primarily engaged in the wholesale or retail trade and normally sells the items being supplied to the general public; and will supply the end item of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement pursuant to 13 C.F.R. 121.406.

UNITED STATES
DEPARTMENT OF
AGRICULTURE

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

APPENDIX 2

Commercial Item Description Crackers

ANNOUNCEMENT CR2

www.ams.usda.gov/fqa/aa20286.pdf

