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

EFFECTIVE DATE: June 30, 2010

TABLE OF CONTENTS

Part 1 Instructions to Bidders ***1***

Part 2 Solicitation Provisions ***1***

Section A KCCO Provisions 1

1. Eligibility of Bidders 1
2. Submission of Bids 2
3. Period of Acceptance of Bids 2
4. Evaluation of Bids 3

Section B FAR Provisions 3

Section C AGAR Provisions 11

Part 3 Contract Clauses ***13***

Section A KCCO Clauses 13

1. Definitions 13
2. **Invoice Requirements** 16
3. Regulatory Requirements for Commodities and Packaging 22
4. Order of Precedence 22
5. Time is of the Essence 22
6. Carrying Charges 22
7. Domestic Origin Application 23
8. Shipping and Delivery Instructions 24
9. Shipment and Delivery 24
10. Seals on Transportation Conveyances 24
11. Miscellaneous Contract Requirements for F.o.b. Vessel Delivery 24
12. Contractor Expenses 25
13. Checkloading 25
14. Acceptance 25
15. Advance Payment Contract Financing 26

Section B FAR Clauses 29

Section C AGAR Clauses 39

Part 1 Instructions to Bidders

This solicitation, called the Master Solicitation for Commodity Procurements (MSCP), is used for the solicitation of bids and award of contracts for various commodities under domestic and foreign food assistance programs administered by the Kansas City Commodity Office (KCCO). KCCO will periodically issue invitations for bids (IFB), available at http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas, requesting the particular commodities being procured. Each IFB will contain a web link to the MSCP.

Bidders are required to read the MSCP, IFB, and USDA Commodity Requirements to understand the solicitation, evaluation, and award process for KCCO commodity acquisitions. The MSCP will be updated as necessary to incorporate changes in law, regulation, and acquisition policies and procedures. Bidders should not assume that a copy of the MSCP, once downloaded, will remain effective. The effective date at the top of the MSCP document will govern which version of MSCP is applicable to a particular IFB. Changes to the MSCP will be bolded in each version. Prior versions of the MSCP will be archived and available.

The following web sites are being provided to potential bidders to obtain the full text of the applicable Federal Acquisition Regulation (FAR), and the Agriculture Acquisition Regulation (AGAR) provisions and clauses incorporated in the contract:

http://acquisition.gov/far/index.html
http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas-vr

This version of the MSCP incorporates clauses and provisions in effect through FAC 2005-41.

Part 2 Solicitation Provisions

Section A KCCO Provisions

1. Eligibility of Bidders

   To be eligible to submit a bid, the bidder shall:

   (a) Demonstrate its ability to meet the prescribed standards specified in the Government's qualification requirements located at http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas-vr. The Government reserves the right to adjust, limit, suspend or rescind any potential contractor who has been deemed qualified and placed on the Government's Qualified Bidders List based on any subsequent information. The Government reserves the right to waive any minor irregularity and/or omission in the information contained in the qualification application that has been submitted.

   (b) For dairy products, have a number of dairy plants approved by Agricultural Marketing Service (AMS) sufficient to produce the quantity offered. The USDA AMS plant approval code must match the appropriate product or operation code for the commodity being offered.

   (c) For f.o.b. vessel bulk grain shipments:

      (i) Have a Uniform Grain and Rice Storage Agreement (UGRSA) with CCC and be on CCC's List of Approved Warehouse, or have a put through agreement or other means to assure timely delivery through an export elevator having a UGRSA or on CCC's List of Approved Warehouses,

with the ability to load ocean-going vessels and barges from a spout that is physically attached to the storage location.

(ii) Have a UGRSA with CCC and be on CCC's List of Approved Warehouses or have a put through agreement or other means to assure timely delivery through a dockside facility or a floating Mid-stream facility for exporting milled rice or soybean meal.

(iii) Have the ability to issue or cause to be issued export weight and grade certificates covering the exportation of the product at the location of the elevator. The certificates shall be acceptable to the FGIS.

(iv) Have approved loadout rates for tankers and tween-deckers.

(v) Trans-shipment will be allowed providing the origin of the loading is out of the Great Lakes at an approved UGRSA warehouse. The original laker vessel shall be loaded at the UGRSA and trans-shipped to a larger ocean-going vessel most commonly in the St. Lawrence Seaway.

(d) For Instore bids, have a UGRSA and be on CCC's List of Approved Warehouse or be recognized members of the grain industry with either direct ownership of the UGRSA warehouse named in the bid or be otherwise able to furnish negotiable warehouse receipts or certified KC-228's issued from the approved UGRSA warehouse named in the bid.

2. Submission of Bids

(a) Submit bids to the office specified in the IFB at or before the exact time specified in the IFB. Submission of bids by any means other than as specified in the IFB will be determined nonresponsive. Bids that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(b) For regular mail or hand delivered bids, the envelope containing the bid is to be sealed and marked with the name and address of the bidder. Bids submitted by express mail shall be sealed inside a second envelope. All envelopes shall be plainly marked: "Do Not Open Until Prescribed Time Under Invitation for Bid Number (enter appropriate number)." For express mail bids, this statement shall be printed clearly on the outer express envelope, not the mailing label.

(c) For bids submitted using electronic commerce, the bidder is responsible for choosing its own Internet Service Provider (ISP) to transmit, translate, or carry data between the bidder and the Government. The bidder is responsible for the cost of its third-party network. The Government will not be responsible for any failure attributed to the transmission of the bid data prior to being accepted and stored on the Government's web server including, but not limited to, the following:

(i) Any failure of the bidder's computer hardware or software;
(ii) Availability of the ISP;
(iii) Delay in transmission due to the speed of the modem;
(iv) Delay in transmission due to excessive volume of Internet traffic;

3. Period of Acceptance of Bids

The bidder agrees to hold the prices in its bid firm through the contract award date and time specified in the IFB.

4. Evaluation of Bids

(a) The Government will award a contract(s) to the responsible bidder(s) whose bid(s) conforming to the solicitation will be most advantageous to the Government, price and price-related factors considered. The following factors shall be used to evaluate bids:

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

With respect to factor number 2) above, as provided in AGAR 470.201 and 470.202, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or related freight, when combined with offers for commodities or related freight, results in a lower landed cost to the Government. In addition, bids for which the Government has not received matching ocean freight offers/indications shall not be considered.

(b) HUBZone Program
The Government will award contracts to eligible HUBZone bidders in accordance with FAR Subpart 19.13, except for price evaluation preference mandated by the provisions of 15 U.S.C. 657a, 15 U.S.C. 632(p)(5)(A)(i)(III)(cc). The HUBZone price evaluation preference shall be applied as follows.

For agricultural commodities procured for international food aid programs:
In accordance with 15 U.S.C. 657a, the price evaluation preference shall be 5% on the first portion of a contract to be awarded that is not greater than 20% of the total volume of each commodity being procured in a single invitation.

For agricultural commodities procured for domestic food distribution programs:
In accordance with 15 U.S.C. 657a, the price evaluation preference shall be:
1) 10% for the portion of a contract to be awarded that is not greater than 25% of the total volume being procured for each commodity in a single invitation;
2) 5% for the portion of a contract to be awarded that is greater than 25%, but not greater than 40%, of the total volume being procured for each commodity in a single invitation; and
3) 0% for the portion of a contract to be awarded that is greater than 40% of the total volume being procured for each commodity in a single invitation.

Section B FAR Provisions

52.204-8 Annual Representations and Certifications (Feb 2009)

(a)(1) The North American Industry Classification System (NAICS) code for this

acquisition is provided in AGAR Provision 452.219-70, Size Standard and NAICS Code Information (Jan 2005).

(2) The small business size standard is provided in AGAR Provision 452.219-70, Size Standard and NAICS Code Information (Jan 2005).

(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.

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

52.209-5 Certification Regarding Responsibility Matters (Apr 2010)

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

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

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

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

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

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

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

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

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

(2) *Examples*.

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

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

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

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

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

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

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

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

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

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

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

(End of provision)

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

52.209-7 Information Regarding Responsibility Matters (Apr 2010)
(Applicable to solicitations where resultant contract value is expected to exceed $500,000)

(a) *Definitions*. As used in this provision—

"Administrative proceeding" means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

"Federal contracts and grants with total value greater than $10,000,000" means—

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

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

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

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

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

(i) In a criminal proceeding, a conviction.

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

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

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

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

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

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

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

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

(End of provision)

52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29 (Aug 1998)

52.214-4 False Statements in Bids (Apr 1984)

52.214-5 Submission of Bids (Mar 1997)

52.214-6 Explanation to Prospective Bidders (Apr 1984)

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids (Nov 1999)

52.214-10 Contract Award-Sealed Bidding (Jul 1990)

52.214-12 Preparation of Bids (Apr 1984)

52.214-31 Facsimile Bids (Dec 1989)
(Applicable when facsimile bids are authorized by the IFB.)

52.214-34 Submission of Offers in the English Language (Apr 1991)

52.214-35 Submission of Offers in U.S. Currency (Apr 1991)

52.216-1 Type of Contract (Apr 1984)

The Government contemplates award of a firm fixed price contract resulting from this solicitation.

(End of provision)

52.216-27 Single or Multiple Awards (Oct 1995)
(Applicable for Indefinite Delivery contracts.)

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

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

:

b) The offer certifies that the following supplies are Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, or Peruvian End Products) or Israeli End Products as defined in the clause of this solicitation entitled "Buy American Act-Free Trade Agreements-Isreali Trade Act." : Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin

[List as necessary]

c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the

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

Other Foreign End Products:

Line Item No.	Country of Origin

[List as necessary]

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

(End of Provision)

(Applicable for acquisitions valued at $25,000 or more, but less than $194,000 and only to the packaging and container components utilized by commodity vendors selling agricultural products to KCCO; not applicable to the acquisition of empty 50 kg polypropylene bags, needles, and twine.)

52.225-6 Trade Agreements Certificate (Mar 2009)

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

Other End Products:

End Products	Country of Origin

[List as necessary]

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

products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

(End of Provision)

(Applicable for acquisitions valued at **$194,000** or more and only to the packaging and container components utilized by commodity vendors selling agricultural products to KCCO; not applicable to the acquisition of empty 50 kg polypropylene bags, needles, and twine.)

52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan—Certification (Aug 2008)

a) *Definitions*. As used in this provision—

"Business operations" means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

"Marginalized populations of Sudan" means—

(1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) (50 U.S.C. 1701 note); and

(2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.

"Restricted business operations" means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended.

(b) *Certification*. By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(End of provision)

52.232-15 Progress Payments Not Included (Apr 1984)

52.233-2 Service of Protest (Sep 2006)
Location where a protest may be served on the Contracting Officer:
The issuing office as indicated in the IFB.

(Applicable for all contracts expected to exceed the Simplified Acquisition Threshold of $100,000.)

52.252-1 Solicitation Provisions Incorporated by Reference (Feb 1998)
This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at these addresses:
http://www.acqnet.gov/far
http://www.usda.gov/procurement/policy/agar.html
(End of provision)

52.252-3 Alterations in Solicitation (Apr 1984)

Portions of this solicitation are altered as follows:

52.214-3 Amendments to Invitations for Bids (Dec 1989)
(Amendments shall be acknowledged only by the method specified in the IFB.)

52.214-22 Evaluation of Bids for Multiple Awards (Mar 1990)
(Individual awards will be for the items or combination of items that result in the lowest aggregate cost to the Government, excluding the assumed administrative cost.)

52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999)
(Compliance evaluations will be conducted on a post-award basis.)
(Applicable only for contracts exceeding $10,000,000.)

(End of provision)

Section C AGAR Provisions

452.204-70 Inquiries (Feb 1988)

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the Contracting Officer issuing the solicitation about any aspect of this requirement prior to contract award.

452.216-72 Evaluation Quantities—Indefinite Delivery Contract (Feb 1988)

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation, and will add other direct costs if applicable.

(Applicable for indefinite delivery contracts.)

452.219-70 Size Standard and NAICS Code Information (Jan 2005)

The North American Industrial Classification System Code(s) and business size standard(s) describing the products and/or services to be acquired under this solicitation are listed below:

Commodity (USDA Commodity Requirement)		NAICS Code	Small Business Size Standard
All Purpose Wheat Flour/Bread Flour	(WFBF)	311211	500
Bakery Flour Products	(BF)		
Barley	(BAR)		
Buckwheat Products	(BWP)		
Bulgur Wheat/Soy - Fortified Bulgur	(BWSF)		
Corn Products	(CP)		
Cornmeal	(CM)		
Corn-Soy Blend	(CSB)		
Corn-Soy Milk	(CSM)		
Instant Corn-Soy Milk	(ICSM)		
Inst. Corn-Soya Masa Flour	(MF)		
Soy-Fortified Cornmeal	(SFCM)		
Soy-Fortified Sorghum Grits	(SFSG)		
Wheat Flour	(WF)		
Wheat Soy Blend	(WSB)		
Wheat Soy Milk	(WSM)		
Milled Rice (bagged)	(MR)	311212	500
Milled Rice (Bulk)	(KCPG)		
Rice Products	(RP)		
Crude or Refined Corn Oil	(BOT)	311221	750
Crude Degummed Soybean Oil	(BOT)	311222	500
Soybean Meal (Bulk)	(KCPG)		
Value Added Soy Products	(VASP)		
Vegetable Oil Products	(VP)		
Crude Sunflower Seed Oil	(BOT)	311223	1,000
Sunflower Seed Butter	(SSB)		
Sunflower Seed Oil	(SFSO)		
Corn Oil	(CO)	311225	1,000
Bulk Refined Soybean Oil	(BOT)		
Vegetable Oil	(VO)		
Fortified R-T-E Cereals	(FC)	311230	1,000
Instant Rice Baby Cereal	(RC)		
Processed Cereal Products	(PC)		
Dehydrated Potato Products	(DPP)	311423	500
Dehydrated Soup Mix	(DSM)		

Cheese (Bulk) Cheese (Processed) Mozzarella Cheese	(BCD) (PCD) (MCD)	311513	500
Evaporated Milk Infant Formula Instant Nonfat Dry Milk Nonfortified Nonfat Dry Milk Nonfortified Nonfat Dry Milk-Export Ultra High Temperature Milk	(EVD) (IFD) (IMD) (DMD) (DME) (UHD)	311514	500
Tallow	(BOT)	311613	500
Canned Salmon	(CPS)	311711	500
Crackers (Saltine)	(CR)	311821	750
Bakery Mix	(BFM)	311822	500
Macaroni and Cheese (Dry) Pasta Products	(MC) (PA)	311823	500
Peanut Products	(PP)	311911	500
Vegetable Oil Products	(VP)	311941	500
Bags	(KCP BAGS)	314911	500
Twine	(KCP BAGS)	314991	500
Needles	(KCP BAGS)	424310	500
Bagged Grain Dry Edible Beans Grain (Bulk)	(KCBG) (DEB) (KCPG)	424510	500
Peas & Lentils	(PL)	424590	500

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

452.228-70 Alternative Forms of Security (Nov 1996)

If furnished as security, money orders, drafts, cashiers checks, or certified checks shall be drawn payable to: USDA/CCC

(Applicable for contracts that require a performance bond.)

Part 3 Contract Clauses

Section A KCCO Clauses

1. Definitions

The following definitions are incorporated into the contract.

(a) "Agricultural commodity" means:

(i) For international feeding and development programs:

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

1. Produced in the United States; and

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

(ii) For domestic food assistance programs:
As provided by AGAR 470.103(b) commodities and the products of agricultural commodities acquired for use by the Food and Nutrition Service shall be a product of the United States, except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to ingredients. Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:
(1) Produced in the United States; and
(2) Commercially available in the United States at fair and reasonable prices from domestic sources.

(iii) Except as provided in paragraph (iv) of this section, a commingled product shall be considered to be a product of the United States if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to the offeror, or obtains during the contract performance period specified in the solicitation, or combined thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the United States.

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

(b) "Commodity Credit Corporation (CCC)" means a wholly-owned government corporation within the U.S. Department of Agriculture (USDA).

(c) "CCC List of Approved Warehouses" means a list of grain warehouses approved under the Uniform Grain and Rice Storage Agreement (UGRSA).

(d) Free alongside ship (f.a.s.) (***named port of shipment) means a term of sale which means the seller fulfills its obligation to deliver when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment. The buyer bears all costs and risks of loss of or damage to the goods from that moment.

(e) "FGIS" means Federal Grain Inspection Service of the USDA which, provides inspection, weighing, and related services on grains, pulses, oilseeds, and processed and graded commodities.

(f) "F.o.b. vessel" means:

(i) for dry bulk cargoes, delivered free of expense to the Government loaded, unstowed and untrimmed, on board the designated conveyance at the USDA-approved port facility specified in the contract.

(ii) for liquid bulk cargoes, delivered free of expense to the Government on board the ocean vessel provided by USDA at the named port of shipment specified in the contract.

(g) "Grain Acquisition Report and Invoice for Related Charges," Form KC-228 means a form that is issued by a warehouse operator to CCC in lieu of or in addition to a warehouse receipt.

(h) "Intermodal plant" means delivered free of expense to the Government loaded on board the carrier-supplied conveyance at the origin point.

(i) "Intermodal bridge" means delivered free of expense to the Government delivered in transportation conveyance obtained by the vendor to locations where steamship lines have established and published intermodal rates from a U.S. point to a U.S. port and a foreign destination.

(j) "Intermodal bridge-port for the Great Lakes" means delivered free of expense to the Government delivered in transportation conveyance obtained by the vendor to marine cargo-handling facilities capable of loading ocean-going vessels at a Great Lakes port, as well as loading ocean-going conveyances such as barges and container vans.

(k) "Instore" means within a USDA-approved warehouse.

(l) "Lowest-landed cost," means the lowest combined cost of commodity and ocean freight to deliver a commodity to an overseas destination while adhering to cargo preference statutes and regulations.

(m) "Notice to Deliver," Form KC-269, means the contracted shipping or delivery instructions issued by the Government to the contractor.

(n) "Packaging and containers" includes any substance intended for use as a component of materials used in manufacturing, packing, transporting or holding food if such use is not intended to have a technical effect in such food.

(o) "Shipment Information Log," Form KC-366, means the accounting of the contracted shipping or delivery of commodities for overages, shortages and/or damage.

(p) "Uniform Grain and Rice Storage Agreement (UGRSA)" means a contract for the storage and handling of CCC-interest grain between the CCC and the warehouse.

(q) "World Trade Organization Government Procurement Agreement (WTO GPA) country" means any of the following countries: Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea

(Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan or United Kingdom.

2. **Invoice Requirements**

Only whole pounds should be shown on the invoice. When the total quantity to be invoiced includes a fraction of a pound, the fraction should be omitted if less than one-half pound and raised to the next full pound if one-half pound or more.

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

The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse side of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number and Notice to Deliver (N/D) number;
(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered less any advance payments disbursed for the products being invoiced;
(v) Terms of any discount for prompt payment offered;
(vi) Commercial bill of lading and must include the contractor's lot code/lot identification number;
(vii) Copies of Certificate of Analysis (COA), if required. If product delivered falls within the quality discount table as outlined in the commodity specifications, those factors must be identified by an asterisk on the copies of the COA.
(viii) For bulk shipments, weight certificates;
(ix) For rice products, FGIS Official (Original) Commodity Inspection Certificate and a statement from the contractor certifying that the rice was fumigated;
(x) For dairy products;
(A) The AMS Commodity Inspection Certificate or Cheese Graders Memorandum, and Certificate of Analysis (COA), or;
(B) If the Contractors Quality Control Management System was reviewed and found acceptable for the contract by USDA, the Contractor's commodity inspection certificate and COA.

If product delivered falls with the quality discount table as outlines in the commodity specifications, those factors shall be identified by an asterisk on the copies of COA;
(xi) If not otherwise provided for under (ix) or (x)(A), a copy of a Government-issued inspection certificate; and
(xii) A copy of the checkloading certificate as issued by USDA.

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

The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse side of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number and Notice to Deliver (N/D) number;
(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
(v) Terms of any discount for prompt payment offered;
(vi) Commercial bill of lading and must include the contractor's lot code/lot identification number;
(vii) Copies of Certificate of Analysis (COA), if required. If product delivered falls within the quality discount table as outlined in the commodity specifications, those factors must be identified by an asterisk on the copies of the COA.
(viii) For bulk shipments, weight certificates;
(ix) For rice products, FGIS Official (Original) Commodity Inspection Certificate and a statement from the contractor certifying that the rice was fumigated;
(x) For dairy products;
(C) The AMS Commodity Inspection Certificate or Cheese Graders Memorandum, and Certificate of Analysis (COA), or;
(D) If the Contractors Quality Control Management System was reviewed and found acceptable for the contract by USDA, the Contractor's commodity inspection certificate and COA.

If product delivered falls with the quality discount table as outlines in the commodity specifications, those factors shall be identified by an asterisk on the copies of COA;

(xi) A signed and dated "Contractor's Invoice Certification" evidencing the date of delivery and quantity (units) delivered in good condition.
(A) This can be either the Form KC-269 (reserve side), or
(B) A signed and dated commercial invoice evidencing the date of delivery and quantity (units) delivered in good condition which must include the following statement (either as a part of the commercial invoice or an attachment to):

"Contractor's Invoice Certification"

"I certify that this invoice presented for payment is true. This certification is executed with full knowledge of the provisions of 31 U.S.C. 3729, or 15 U.S.C. 714m(a), if applicable, imposing civil liability upon any person who shall make or cause to be made a false, fictitious, or fraudulent claim against the United States."

_____ _____

Authorized Signature Date

(C) Proof of delivery as evidenced by either a copy of the Bill of Lading or a commercial receipt signed and dated by the consignee, if the contractor does not complete a "Contractor's Invoice Certification."

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

The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number and Notice to Deliver (N/D) number;
(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered less any advance payments disbursed for the products being invoiced;
(v) Terms of any discount for prompt payment offered;
(vi) If shipment of packaged product to contracted delivery point is by rail or truck, a Commercial Bill of Lading; otherwise, a KC-366 including Part 1 documenting packaged product quantity (actual units and net weight) and date the packaged product is placed at contracted delivery point;
(vii) Copy of Government-issued inspection certificate;
(viii) Copy of FGIS Official (original) inspection certificates, if required;
(ix) Statement from the contractor certifying fumigation of product, if required;
(x) Copies of Certificate of Analysis (COA), if required. If product delivered falls within the quality discount table as outlined in the commodity specifications, those factors must be identified by an asterisk on the copies of the COA; and
(xi) Copy of checkloading certificate as issued by USDA.

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

The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number and Notice to Deliver (N/D) number;
(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
(v) Terms of any discount for prompt payment offered;
(vi) If shipment of packaged product to contracted delivery point is by rail or truck, a Commercial Bill of Lading; otherwise, a KC-366 including Part 1

documenting packaged product quantity (actual units and net weight) and date the packaged product is placed at contracted delivery point;

(vii) Copy of FGIS Official (original) inspection certificates, if required;

(viii) Statement from the contractor certifying fumigation of product, if required;

(ix) Copies of Certificate of Analysis (COA), if required. If product delivered falls within the quality discount table as outlined in the commodity specifications, those factors must be identified by an asterisk on the copies of the COA;

(xi) Proof of delivery as stipulated in the following table:

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

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

(e) For f.o.b. vessel shipments-dry bulk cargoes

The contractor shall submit an original invoice and one copy to the address designated on the contract to receive invoices. An invoice must include:

(i) Name and address of the contractor;

(ii) Invoice date and number;

(iii) Contract number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Terms of any discount for prompt payment offered;

(vi) Copy of signed and dated on board Ocean Bill of Lading or copy of Mate's Receipt (vessel under and over fills in excess of 5% to be settled in cash at market value determined by the Government on the day following the Bill of Lading date);

(vii) FGIS Official (original) Export Weight and FGIS Official (original) Clear White Grade Inspection Certificates;

(viii) FGIS Protein Certificate, if protein analysis is required;

(ix) FGIS Aflatoxin Certificate, if aflatoxin testing is required;

(x) FGIS Vomitoxin Certificate, if vomitoxin testing is required;

(xi) FGIS or commercial private laboratory certificate for falling number, if falling number analysis is required; and
(xii) If fumigation is required, a fumigation certificate issued by the fumigator and a signed statement on FGIS letterhead attesting that the fumigation was witnessed by a FGIS representative.

(f) For f.o.b. vessel shipments - bulk oils and tallow
The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse side of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number and Notice to Deliver (N/D) number;
(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
(v) Terms of any discount for prompt payment offered;
(vi) Copy of signed and dated on board Ocean Bill of Lading or Mate's Receipt;
(vii) Chemical analysis certificate issued by a National Oilseed Processors Association or American Fats and Oils Association, Inc. – approved commercial chemist on the chemist's letterhead, which includes the following certification:
"The undersigned hereby certifies that the chemical analysis certificate was issued as a result of the analysis of samples taken by an independent surveyor, and that such chemical analysis was performed in accordance with methods prescribed in the Trading Rules of the National Oilseed Processors Association or American Fats and Oils Association, Inc.", as applicable;
(viii) The chemical analysis certificate must state that the bulk oil/tallow met the analytical requirements of the specifications as provided in the contract;
(ix) A sampling certificate which includes a statement that the samples were drawn in accordance with American Oil Chemists Society Method C 1-47;
(x) Survey report of the independent surveyor which must include the weight of the bulk oil/tallow delivered and a certification that the ship's tanks were examined and found suitable for receipt and carriage of the bulk oil/tallow.

(g) For f.a.s. vessel - seeds shipments
The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse side of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number;
(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
(v) Terms of any discount for prompt payment offered;
(vi) Copy of signed and dated dock receipt;
(vii) Germination Analysis Certificate;

(viii) Consular invoice and other named documents required by the country of destination regulations; and
(ix) Certified Seed Certificate.

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

The contractor shall submit an original invoice and one copy to the address designated on the contract to receive invoices. An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number;
(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered less any advance payments disbursed for the products being invoiced;
(v) Terms of any discount for prompt payment offered;
(vi) Commercial Bill of Lading;
(vii) Copy of Government-issued inspection certificate; and
(xi) Copy of checkloading certificate as issued by USDA.

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

The contractor shall submit an original invoice and one copy to the address designated on the contract to receive invoices. An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number;
(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
(v) Terms of any discount for prompt payment offered;
(vi) Commercial Bill of Lading; and
(vii) Proof of delivery as evidenced by a dock receipt, consignee receipt, the ex railcar portion (part 2) of the KC-366, signed by the freight forwarder/ unloading stevedore, as proof of delivery at the f.a.s. position or similar document signed by the unloader and receiver showing count and over, short and damage.

(j) For Instore delivery
The contractor shall submit an original invoice and one copy to the address designated on the contract to receive invoices. An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number;
(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
(v) Terms of any discount for prompt payment offered; and

(vi) Form KC-228 or negotiable warehouse receipts.

3. Regulatory Requirements for Commodities and Packaging

The commodity shall conform to the applicable provisions of the "Federal Food, Drug, and Cosmetic Act" (21 U.S.C. 301 et. seq.), as amended, and the relevant regulations. The contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations related to its performance under this contract.

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

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

4. Order of Precedence

Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Invitation for Bids
(b) Solicitation provisions
(c) Contract clauses
(d) USDA Commodity Requirements
(e) Other documents, exhibits, and attachments

5. Time is of the Essence

Time is of the essence in the performance of this contract. Performance shall be strictly in accordance with the applicable quantities and schedules set forth in this contract. Whenever it appears the contractor will not meet the performance schedule, the contractor shall immediately notify the Government of the reason and length of the delay. The contractor shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. Any additional cost caused by these requirements shall be borne by the contractor. If the contractor is unable to meet the required performance schedules for any reason, other than a change directed by the Government, the Government shall have the option to cancel this contract, or fill such contract or any portion thereof, from sources other than the contractor and to reduce the contractor's contract quantities accordingly at no increase in unit price, without any penalty to the Government. This condition shall not limit the Government's rights under the default provision contained herein.

6. Carrying Charges

For f.o.b. vessel contracts only (excludes bulk oils and tallow), if the Government fails to take delivery by the end of the delivery period for reasons beyond the control of the

contractor, the Government will pay carrying charges, on gross metric tons (net metric tons for wheat and sorghum)**,** at the rate of 18 cents per metric ton per day beginning on the day following the end of the delivery period and continuing through the date the vessel presents the notice of readiness. For the purpose of carrying charges, a vessel must have passed all required inspections and be ready to receive grain in the compartments required for loading and a valid Notice of Readiness (NOR) must be presented during normal business hours of 0900 to 1600 local time, Monday through Friday and on Saturday between 0900 to 1200 noon (provided it is not a holiday). If the NOR is filed after business hours, the NOR will be considered presented on the next business day.

For f.o.b. vessel contracts for bulk oil and tallow, if the Government fails to take delivery by the end of the delivery period for reasons beyond the control of the contractor, the Government will pay to the contractor a premium based on the actual (noncumlative) number of days by which the delivery period is exceeded through the date the vessel presents the notice of readiness as follows:

(1) If exceeded by 1, 2, 3, or 4 days, ½ of 1 percent of the f.o.b. price;
(2) If exceeded by 5 or 6 days, 1 percent of the f.o.b. price;
(3) If exceeded by 7 or 8 days, 1 ½ percent of the f.o.b. price;
(4) If exceeded by more than 8 days, an additional premium of ¼ of 1 percent of the f.o.b. price for each day beyond 8 days.

If the f.o.b. vessel contract contains multiple prices, the premium shall be calculated on the weighted average of the contract prices.

7. Domestic Origin Application

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

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

(b) Waived ingredients may be acquired as a foreign end product without regard to the restrictions of the Buy American Act.
(b.1.) The following ingredients have been determined by the Head of Contracting Activity Designee as not available at fair and reasonable prices and are waived from all Buy American Act and domestic origin restrictions:

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

- Rennet (coagulant)

8. Shipping and Delivery Instructions

The Government shall issue to the contractor electronic "Notices to Deliver" via email. The contractor shall be responsible for ensuring that it is capable of receiving email communications during the course of the contract. The contractor shall ensure that it has an accurate email address on file with the Government. The Government will not be responsible for any failure of contractor receipt of electronic "Notices to Deliver" attributable to inoperable receiver equipment and/or software. The Government reserves the right, at its option, to issue "Notices to Deliver" by other means such as, but not limited to, facsimile transmission or regular mail.

9. Shipment and Delivery

(a) For Domestic Programs:

(i) The State Agency, "Consign To" party shown on the KC-269, Notice to Deliver (N/D) shall be faxed on the date of shipment.

(ii) The receiving warehouse, "Care Of" party shown on the N/D, shall be called at least 24 hours in advance to schedule an unloading appointment. This is not required for rail shipments. Contractors shall notify the contracting officer in advance if deliveries will not be made by final delivery date under the contract.

(b) For International Programs - Packaged Commodities:

(i) The Notify Party shown on the KC-269, Notice to Deliver (N/D), shall be contacted prior to shipment.

(ii) The contractor shall submit form KC-366, Shipment Information Log, for each N/D, annotating on the form when the shipment is complete for each N/D. The form is available at http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas-ex. The KC-366 is to be faxed as early as possible each Tuesday and Thursday, until shipping is complete, to both International Procurement Division, KCCO (facsimile number 816-926-6767) and the Notify Party(s) on the N/D. Contractors shall notify the contracting officer in advance if shipments will not be made by the final shipment date under the contract.

10. Seals on Transportation Conveyances

Suppliers of commodities, products and/or services shall be responsible for placing a seal(s) on all doors of each transportation conveyance upon completion of loading or servicing. The seal number(s) shall be entered on the bill of lading, which must be signed or acknowledged by the carrier or its agent. Seals shall be sequentially numbered, barrier-type and meet the American Society for Testing and Materials (ASTM) Standards. Seals shall be 1/8-inch diameter cable, high security bolt, or equivalent. Information on ASTM Standards may be found at http://www.astm.org.

11. Miscellaneous Contract Requirements for F.o.b. Vessel Delivery

(a) The Government will furnish the contractor at least ten (10) days advance notice of vessel readiness.

(b) Contractor must forward original Mate's Receipt to the Government's representative within 48 hours after completion of vessel loading.

(c) If multiple contracts are awarded on an IFB to the same contractor who has designated the same loading berth, the contractor shall complete loading in one continuous berthing. If the contractor elects not to complete loading in one continuous berthing, the contractor will be liable for any charges associated with shifting and reberthing as provided in the Charter Party.

(d) Contractor agrees to load the Government's nominated vessels in rotation with all vessels for loading at the elevator based on when vessels file and are accepted as ready-to-load in all respects. In the event that the contractor, for its own convenience, elects to by-pass the Government's nominated vessels to load a vessel which filed and was accepted later than the Government's nominated vessel, such action will be construed as failure or refusal of the contractor to perform.

(e) Contractor will be liable to the Government for any actual damages suffered by the Government resulting from failure or refusal of the contractor to perform, which is not excusable under the Excusable Delay clause. Such actual damages may include, but are not limited to, the cost of demurrage, inter-port vessel relocation, vessel discharge costs, reprocurement costs, and claims by carriers for damages resulting from delays in loading resulting from the commodity not being available for loading, or for delays or slowness of the vessel loading.

12. Contractor Expenses

Unless stipulated otherwise in the IFB, all expenses incurred including but not limited to testing, analysis, fumigation, and certification requirements shall be the responsibility of the contractor.

13. Checkloading

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

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

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

14. Acceptance

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

15. Advance Payment Contract Financing

(a) Approval of any contract financing payment will be at the discretion of the contracting officer. The Government will issue contract financing payments within ten days of receipt and approval of requests that comply with the conditions for submission. Contract financing payments are not subject to Prompt Payment Act. Requests for advance payment shall be on a shipment-by-shipment basis. The amount of advance payment shall be commensurate with the funds necessary to complete a shipment—not to exceed the unpaid contract price for the shipment. The following conditions shall be met before considering advance payments:

(1) The advance payment may be authorized only for international food aid shipments procured basis intermodal bridge or f.a.s. vessel delivery points. For domestic food assistance shipments, the advance payment may be authorized only for f.o.b. destination shipments for which the contract requires the vendor to deliver outside of the continental United States (e.g., Hawaii, Puerto Rico, Guam).

(2) The product for which advance payment is intended shall have been inspected and accepted at the origin point by an employee of the USDA, or contractor personnel under the direction or supervision of Government personnel, and such person shall have determined that the product meets contract specifications. Inspection shall include USDA checkloading of the product into the transportation conveyance.

(3) When formal acceptance occurs as stipulated above, title of the supplies shall transfer to the Government; however, risk of loss will remain with the contractor until delivery at the destination specified in the contract.

(4) The contractor shall subrogate to the United States its claim(s) against the carrier transporting the product to the contracted delivery point and, if applicable, against any firm contracted to unload the conveyance at the contracted delivery point. The contractor shall also assure that its contracts with the carrier and handlers do not contain an anti-assignment clause.

(5) As risk of loss remains with the vendor until delivery to the final contracted destination, notwithstanding the subrogation of claims required, deficiency in contract performance may result in a vendor being determined nonresponsible for future contracts.

(6) The contractor cannot previously have been in violation of any contractual provision relating to the quality or product specifications regarding the sale of agricultural commodities to the United States in the three years preceding the request.

(7) No advance payments will be authorized for shipments that are not shipped within the period of performance stipulated in the contract.

(b) Submission of requests for advance payments:

(1) Requests for advance payments shall be clearly identified as such on the submission. Contractors using invoice forms to request advance payments must clearly identify the document as a “Request for Advance Payment.” Contractors using another form to request advance payment must that it contains the same data as an invoice document would require.

(2) Requests for advance payments shall include:

(i) The contract number and notice to deliver number,

(ii) The rail or truck bill of lading covering the relevant shipment,

(iii) The Government-issued inspection certificate,
(iv) Checkloading certificate as issued by the USDA, and
(v) A completed claim subrogation form; suggested format provided at: http://www.fsa.usda.gov/Internet/FSA_File/subrogation_form.doc

(3) Requests for advance payments shall be submitted to the appropriate contracting area:

(i) For international food aid shipments:

KCCO – International Procurement Division
USDA - Farm Service Agency
Beacon Facility - Mail Stop 8738
P.O. Box 419205
Kansas City, MO 64141-6205

For *express* mail:
KCCO – International Procurement Division
USDA - Farm Service Agency
Beacon Facility - Mail Stop 8738
9240 Troost Ave.
Kansas City, MO 64131-3055

(ii) For domestic food off-shore shipments:

KCCO – Domestic Procurement Division
USDA - Farm Service Agency
Beacon Facility - Mail Stop 8718
P.O. Box 419205
Kansas City, MO 64141-6205

For *express* mail:
KCCO – Domestic Procurement Division
USDA - Farm Service Agency
Beacon Facility - Mail Stop 8718
9240 Troost Ave.
Kansas City, MO 64131-3055

(c) Use of funds. The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable transportation costs for direct materials, direct labor, and indirect costs. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation.

(d) Repayment to the Government. At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) of this clause.

(e) Default.

(1) If any of the following events occur, the Government may, by written notice to the Contractor, withhold further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The commission of an act of bankruptcy.

(2) If any of the events described in paragraph (e)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government may demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(3) The Government may take any of the actions described in paragraphs (e)(1) and (e)(2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(f) Prohibition against assignment. Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(g) The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(h) Other security. The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(i) Representations. The Contractor represents the following:

(1) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(2) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(3) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

(4) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(5) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(6) These representations shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

(j) Covenants. To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Change substantially the management, ownership, or control of the corporation;

(2) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;

(3) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings.

Section B FAR Clauses

52.202-1 Definitions (Jul 2004)

52.203-3 Gratuities (Apr 1984)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.203-5 Covenant Against Contingent Fees (Apr 1984)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.203-6 Restrictions on Subcontractor Sales to the Government (Sep 2006)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.203-7 Anti-Kickback Procedures (Jul 1995)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Sept. 2007)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010)
(Applicable for contracts with values expected to exceed $5 million, and with

a performance period of 120 days or more.)

52.203-14 Display of Hotline Poster(s) (Dec 2007)

(a) Definition.

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s)	*Obtain from*
USDA Hotline, "Report Violations of Laws and Regulations Relating to USDA Programs"	USDA Office of Inspector General www.usda.gov/oig/hotline.htm Toll Free Number: (800)424-9121

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed $5,000,000, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

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

52.204-7 Central Contractor Registration (Apr 2008)

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

52.209-1 Qualification Requirements (Feb 1995)

Government contact for information on the standards for qualification: Kansas City Commodity Office at http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas-vr.

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

52.209-8 **Updates of Information Regarding Responsibility Matters (Apr 2010) (Applicable to solicitations where resultant contract value is expected to exceed $500,000 and in contracts in which offeror checked "has" in paragraph (b) of the provision 52.209-7)**

a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by entering the required information in the Central Contractor Registration database at http://www.ccr.gov (see 52.204-7).

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

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

(3) With the exception of the Contractor, only Government personnel and authorized users performing business on behalf of the Government will be able to view the Contractor's record in the system. Public requests for system information will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

52.211-5 **Material Requirements (August 2000)**

52.211-11 **Liquidated Damages- Supplies, Services, or Research and Development (Sep 2000)**

NOTE: Liquidated damages are based upon delivery periods for f.o.b. destination contracts, f.o.b. vessel contracts, and f.a.s. vessel contracts for bags, needles and twine; and shipping periods for all others.

(a) If the contractor fails to ship/deliver the supplies or perform the services within the time specified in this contract, the contractor shall, in place of actual damages, pay to the Government liquidated damages in accordance with the table below, not to exceed 45 days of delay.

Commodity (USDA Commodity Requirement) (http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas)		**Rate**	**Per Net Weight**
All Purpose Wheat Flour/Bread Flour	(WFBF)	$ 0.10	Cwt/day
Bagged Grain	(KCBG)		
Barley	(BAR)		
Buckwheat Products	(BWP)		
Bulgur Wheat/Soy - Fortified Bulgur	(BWSF)		
Canned Salmon	(CPS)		
Corn Oil	(CO)		
Cornmeal	(CM)		
Corn-Soy Blend	(CSB)		
Corn-Soy Milk	(CSM)		
Instant Corn-Soy Milk	(ICSM)		
Crude Degummed Soybean Oil	(BOT)		
Crude or Refined Corn Oil	(BOT)		
Crude Sunflower Seed Oil	(BOT)		
Dehydrated Potato Products	(DPP)		
Dry Edible Beans	(DEB)		
Inst. Corn-Soya Masa Flour	(MF)		
Milled Rice (bagged)	(MR)		
Peas & Lentils	(SFCM)		
Soy-Fortified Cornmeal	(PL)		
Soy-Fortified Sorghum Grits	(SFSG)		
Sunflower Seed Oil	(SFSO)		
Tallow	(BOT)		
Value Added Soy Products	(VASP)		
Vegetable Oil	(VO)		
Wheat Soy Blend	(WSB)		
Wheat Soy Milk	(WSM)		
Bakery Flour Products	(BF)	$ 0.15	Cwt/day
Bakery Mix Products	(BFM)		
Corn Products	(CP)		
Wheat Flour	(WF)		
Rice Products	(RP)	$ 0.20	Cwt/day
Crackers (Saltine)	(CR)	$ 0.30	Cwt/day
Instant Rice Baby Cereal	(RC)		
Pasta Products	(PA)		
Processed Cereal Products	(PC)	$ 0.35	Cwt/day
Vegetable Oil Products	(VP)		
Cheese (Bulk)	(BCD)	$ 0.45	Cwt/day
Cheese (Processed)	(PCD)		
Evaporated Milk	(EVD)		
Fortified R-T-E Cereals	(FC)		
Infant Formula	(IFD)		
Instant Nonfat Dry Milk	(IMD)		
Mozzarella Cheese	(MCD)		
Macaroni and Cheese (Dry)	(MC)		
Nonfortified Nonfat Dry Milk	(DMD)		
Nonfortified Nonfat Dry Milk-Export	(DME)		
Peanut Products	(PP)		
Sunflower Seed Butter	(SSB)		
Ultra High Temperature Milk	(UHD)		
Twine	(KCP BAGS)	$2.50	Carton/day

Bags	(KCP BAGS)	$25.00	1,000 bags/day

(b) If the Government terminates this contract in whole or in part under the Default—Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains shipment/delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

52.211-16 Variation in Quantity (Apr 1984)
(b) The permissible variation shall be limited to:
five percent decrease
This decrease shall apply to each Notice to Deliver per contract.

52.214-26 Audit and Records—Sealed Bidding (Mar 2009)
(Applicable for contracts exceeding $650,000.)

52.214-27 Price Reduction for Defective Cost or Pricing Data-Modifications- Sealed Bidding (Oct 1997)
(Applicable for contracts exceeding $650,000.)

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Oct 1997)
(Applicable for contracts exceeding $650,000.)

52.219-3 Notice of Total HUBZone Set-Aside (Jan 1999)
(Applicable when the IFB stipulates the procurement is a total HUBZone set-aside.)

52.219-6 Notice of Total Small Business Set-Aside (Jun 2003)
(Applicable when the IFB stipulates the procurement is a total small business set-aside.)

52.219-7 Notice of Partial Small Business Set-Aside (Jun 2003)
(Applicable when the IFB stipulates the procurement is a partial small business set-aside.)

52.219-8 Utilization of Small Business Concerns (May 2004)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.219-9 Small Business Subcontracting Plan (Apr 2008) Alternate 1 (Oct 2001)
(Applicable for contracts exceeding $550,000.)

Civilian Agency Acquisition Council Letter 2005-06, dated December 22, 2005, authorized a class deviation requiring the submission of Summary Subcontracting reports directly into the Electronic Subcontracting System (eSRS). Contractors shall no longer manually submit their reports in accordance with the instructions on the forms. Contractors shall submit reports via the eSRS website available at: www.esrs.gov.

52.219-14 Limitations on Subcontracting (Dec 1996)
(Applicable to any portion of the requirement that is set aside for small business and the contract amount is expected to exceed $100,000; and is applicable to all contracts awarded under the 8(a) program.)

52.219-16 Liquidated Damages- Subcontracting Plan (Jan 1999)

52.222-1 Notice to the Government of Labor Disputes (Feb 1997)

52.222-3 Convict Labor (Jun 2003)
(Applicable for contracts exceeding $3,000.)

52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (Jul 2005)
(Applicable for contracts exceeding $100,000.)

52.222-21 Prohibition of Segregated Facilities (Feb 1999)

52.222-26 Equal Opportunity (Mar 2007)

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006)
(Applicable for contracts exceeding $100,000.)

52.222-36 Affirmative Action for Workers with Disabilities (Jun 1998)
(Applicable for contracts exceeding $10,000.)

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006)

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)
(Applicable for all contracts expected to exceed the Simplified Acquisition Threshold of $100,000.)

52.223-6 Drug-Free Workplace (May 2001)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000 and to all contracts awarded to an individual.)

52.223-14 Toxic Chemical Release Reporting (Aug 2003)
See EPA's web site at http://www.epa.gov/tri for guidance.

(Applicable for contracts exceeding $100,000.)

52.225-3 Buy American Act-Free Trade Agreements-Israeli Trade Act (Jun 2009)
(Applicable for contracts valued at $25,000 or more but less than **$194,000** and only to the packaging and container components utilized by commodity vendors selling agricultural products to KCCO; not applicable to contracts for empty 50 kg polypropylene bags, needles, and twine.)

52.225-5 Trade Agreements. (Aug 2009)
(Applicable for contracts valued at **$194,000** or more and only to the packaging and container components utilized by commodity vendors selling agricultural products to KCCO; not applicable for empty 50 kg polypropylene bags, needles, and twine.)

52.225-13 Restrictions on Certain Foreign Purchases (Jun 2008)
(Applicable to contracts for empty 50 kg polypropylene bags, needles, and twine, and only the packaging and container component.)

52.226-6 Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009)

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

"Apparently wholesome food" means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

"Excess food" means food that—

(1) Is not required to meet the needs of the executive agencies; and

(2) Would otherwise be discarded.

"Food-insecure" means inconsistent access to sufficient, safe, and nutritious food.

"Nonprofit organization" means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

(b) In accordance with the Federal Food Donation Act of 2008 (Pub. L. 110-247), the Contractor is encouraged, to the maximum extent practicable and safe, to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(c) *Costs*.

(1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and the logistical support to collect, transport, maintain the safety of, or distribute the excess, apparently wholesome food to the nonprofit organization(s) that provides assistance to food-insecure people.

(2) The Contractor will not be reimbursed for any costs incurred or associated with the donation of excess foods. Any costs incurred for excess food donations are unallowable.

(d) *Liability*. The Government and the Contractor, including any subcontractors, shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791). Nothing in this clause shall be construed to supersede State or local health regulations (subsection (f) of 42 U.S.C. 1791).

(e) *Flowdown*. The Contractor shall insert this clause in all contracts, task orders,

delivery orders, purchase orders, and other similar instruments greater than $25,000 with its subcontractors or suppliers, at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States.

(End of clause)

52.228-2 Additional Bond Security (Oct 1997)
(Applicable for contracts that require a performance bond.)

52.228-11 Pledge of Assets (Feb 1992)
(Applicable for contracts that require a performance bond.)

52.228-14 Irrevocable Letter of Credit (Dec 1999)
(Applicable for contracts that require a performance bond.)

52.229-3 Federal, State, and Local Taxes (Apr 2003)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.232-1 Payments (Apr 1984)
(As used in this clause, "partial deliveries" means "Notices to Deliver"-see definitions.)

52.232-8 Discounts for Prompt Payment (Feb 2002)

52.232-11 Extras (Apr 1984)

52.232-17 Interest (Oct 2008)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.232-23 Assignment of Claims (Jan 1986)

USDA forms CCC-251 (Notice of Assignment) and CCC-252 (Instrument of Assignment) may be obtained at:
http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas
or the contractor may use its own forms provided the forms are essentially consistent with CCC-251 and CCC-252 in content.

52.232-25 Prompt Payment (Oct 2008)

52.232-33 Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003)

52.233-1 Disputes (Jul 2002)

52.233-3 Protest after Award (Aug 1996)

52.233-4 Applicable Law for Breach of Contract Claim (Oct 2004)

52.242-13 Bankruptcy (Jul 1995)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $100,000.)

52.242-15 Stop-Work Order (Aug 1989)

52.242-17 Government Delay of Work (Apr 1984)

52.243-1 Changes-Fixed Price (Aug 1987)

52.244-6 Subcontracts for Commercial Items (June 2010)
(Additionally, the clause with its Alternate I is applicable for contracts exceeding $5 million.)

52.245-2 Government Property (Fixed-Price Contracts) (June 2007)
(Applicable for any contract where Government property is furnished.)

52.246-2 Inspection of Supplies- Fixed-Price (Aug 1996)
Pursuant to FAR 46.401(b) & (c), the Government reserves the right to perform quality assurance at source; source includes, but are not limited to, contractor's manufacturing facility, packaging facility, warehouse, in-house laboratory, subcontractor's facilities, etc.

52.246-11 Higher-Level Contract Quality Requirement (Feb 1999)
The contractor shall have in place a quality control system consistent with the following ISO principles specified in ANSI/ISO/ASQ Q9001-2000 "Quality Management Systems Requirements"[1]:

4, Quality Management System
5.1, Management Commitment
5.3, Quality Policy
5.5, Responsibility, Authority, Communication
5.6, Management Review (Limited to 5.6.1 and 5.6.2)
6, Resource Management
7.1, Planning of Product Realization
7.2, Customer Related Processes
7.4, Purchasing Process
7.5, Production and Service Provision
7.6, Control, Monitoring and Measuring Devices
8, Measurement, Analysis and Improvement

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

(KCCO's Quality Assurance Surveillance Plan defines the Government's methodology for monitoring contractor compliance with the higher-level standard

and can found on the Commodity Operations website at:
http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas.)

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

(End of Clause)

[1]Official ISO certification is not required.

52.247-34 F.o.b. Destination (Nov 1991)

52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments (Apr 1984)

52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form) (Apr 1984)
(Applicable for contracts of $100,000 or less.)

52.249-2 Termination for Convenience of the Government (Fixed-Price) (May 2004)
(Applicable for contracts exceeding $100,000.)

52.249-8 Default (Fixed-Price Supply and Service) (Apr 1984)

52.252-2 Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:
http://acquisition.gov/far/index.html
http://www.usda.gov/procurement/policy/agar.html

(End of clause)

52.252-4 Alterations in Contract (Apr 1984)

Portions of this contract are altered as follows:

52.246-16 Responsibility for Supplies (Apr 1984)

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

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon—
(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin;
(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is

later, if transportation is f.o.b. destination;

(3) Delivery of the supplies when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment, if transportation is f.a.s. (named port of shipment). If the named port of shipment has warehouse/berth/terminal/transload facilities available and contractor's shipment(s) is unloaded into such a facility as named by the ocean carrier rather than placed alongside vessel on the quay or in lighters, then risk of loss of or damage to supplies shall pass from the contractor at the point where the supplies come to rest in the warehouse/berth/terminal/transload facility designated by the ocean carrier;

(4) Delivery of the supplies on board the ocean vessel at the named port of shipment specified in the contract, if transportation is f.o.b. vessel;

(5) Delivery of the supplies when placed on board the conveyance at named point of origin, if transportation is Intermodal Plant;

(6) Delivery of the supplies to the carrier on rail cars, trucks, or carrier-supplied conveyance at the named bridge point, if transportation is Intermodal Bridge;

(7) Delivery of the supplies to the carrier on rail cars, trucks, or carrier-supplied conveyance at the named Great Lakes bridge-port point, if transportation is Intermodal Bridge-Port for the Great Lakes; or

(8) Receipt by the Government of a warehouse receipt or a certified Form KC-228 covering supplies being delivered, if delivered Instore.

(c) Paragraph (b) of this clause shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.

(d) Under paragraph (b) of this clause, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)

52.253-1 Computer Generated Forms (Jan 1991)

Section C AGAR Clauses

452.211-74 Period of Performance (Feb 1988)

The period of performance of this contract is stipulated in the IFB.

452.216-73 Minimum and Maximum Contract Amounts (Feb 1988)

During the period specified in FAR clause 52.216-18, Ordering, the Government shall place orders totaling a minimum of the minimum quantity awarded, but not in excess of the maximum quantity awarded.

(Applicable for indefinite delivery contracts.)

452.247-70 Delivery Location (Feb 1988)

Shipment of deliverable items, other than reports, shall be to:
see Schedule of Supplies.

(Applicable for all contracts except those for commodities destined for international programs.)