USDA, Farm Service Agency, Commodity Operations
KANSAS CITY COMMODITY OFFICE

MASTER SOLICITATION FOR COMMODITY PROCUREMENTS

Effective Date: 05-20-2014

Table of Contents

Part 1 Instructions to Bidders 1

Part 2 Solicitation Provisions 2

Section A KCCO Provisions 2

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

Section B FAR Provisions 4

52.204-8 Annual Representations and Certifications (Jan 2014) 4
52.209-5 Certification Regarding Responsibility Matters (Apr 2010) 7
52.209-7 Information Regarding Responsibility Matters (Jul 2013) 10
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) 11
52.214-3 Amendments to Invitations for Bids (Dec 1989) 12
52.214-4 False Statements in Bids (Apr 1984) 12
52.214-5 Submission of Bids (Mar 1997) 12
52.214-6 Explanation to Prospective Bidders (Apr 1984) 12
52.214-7 Late Submissions, Modifications, and Withdrawals of Bids (Nov 1999) 12
52.214-10 Contract Award-Sealed Bidding (Jul 1990) 12
52.214-12 Preparation of Bids (Apr 1984) 12
52.214-22 Evaluation of Bids for Multiple Awards (Mar 1990) 12
52.214-31 Facsimile Bids (Dec 1989) 12
52.214-34 Submission of Offers in the English Language (Apr 1991) 12
52.214-35 Submission of Offers in U.S. Currency (Apr 1991) 12
52.216-1 Type of Contract (Apr 1984) 12
52.216-27 Single or Multiple Awards (Oct 1995) 12
52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999) 12
52.225-4 Buy America Act- Free Trade Agreements-Israeli Trade Act Certificate (Nov 2012) 13

52.225-6 Trade Agreements Certificate (Jan 2005) 14
52.225-25 Prohibitions on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran - Representation and Certifications (Dec 2012) 14
52.232-15 Progress Payments Not Included (Apr 1984) 14
52.233-2 Service of Protest (Sep 2006) 15
52.252-1 Solicitation Provisions Incorporated by Reference (Feb 1998) 15
52.252-3 Alterations in Solicitation (Apr 1984) 15
52.214-3 Amendments to Invitations for Bids (Dec 1989) 15
52.214-22 Evaluation of Bids for Multiple Awards (Mar 1990) 15
52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999) 15
Section C AGAR Provisions 15
452.204-70 Inquiries (Feb 1988) 15
452.216-72 Evaluation Quantities—Indefinite Delivery Contract (Feb 1988) 15
452.219-70 Size Standard and NAICS Code Information (Sep 2001) 16
452.228-70 Alternative Forms of Security (Nov 1996) 17
Part 3 Contract Clauses 18
Section A KCCO Clauses 18
1. Definitions 18
2. Invoice Requirements 20
3. Regulatory Requirements for Commodities and Packaging 26
4. Order of Precedence 27
5. Time is of the Essence 27
6. Carrying Charges 27
7. U.S. Origin of Agricultural Commodities - Waiver for Certain Ingredients 28
8. Shipping and Delivery Instructions 29
9. Shipment and Delivery 29
10. Seals on Transportation Conveyances 29
11. Miscellaneous Contract Requirements for F.o.b. Vessel Delivery 31
12. Contractor Expenses 31
13. Checkloading 32
14. Acceptance 32
Section B FAR Clauses 32

52.202-1 Definitions (Nov 2013) 32
52.203-3 Gratuities (Apr 1984) 32
52.203-5 Covenant Against Contingent Fees (Apr 1984) 32
52.203-6 Restrictions on Subcontractor Sales to the Government (Sep 2006) 32
52.203-7 Anti-Kickback Procedures (Oct 2010) 32
52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997) 32
52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997) 33
52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010) 33
52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010) 33
52.203-14 Display of Hotline Poster(s) (Dec 2007) 33
52.203-17 Contractor Employee Whistleblower Rights And Requirement To Inform Employees Of Whistleblower Rights (Apr 2014) 34
52.204-4 Printed or Copied Double-Sided or Postconsumer Fiber Content Paper (May 2011) 34
52.204-7 System for Award Management (Jul 2013) 34
52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Jul 2013) 34
52.209-1 Qualification Requirements (Feb 1995) 37
52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Aug 2013) 37
52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) 37
52.211-5 Material Requirements (August 2000) 38
52.211-11 Liquidated Damages- Supplies, Services, or Research and Development (Sep 2000) 39
52.211-16 Variation in Quantity (Apr 1984) 40
52.214-26 Audit and Records—Sealed Bidding (Oct 2010) 41
52.214-27 Price Reduction for Defective Cost or Pricing Data-Modifications- Sealed Bidding (Aug 2011) 41
52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Oct 2010) 41
52.219-3 Notice of Total HUBZone Set-Aside (Nov 2011) 41
52.219-6 Notice of Total Small Business Set-Aside (Nov 2011) 41
52.219-7 Notice of Partial Small Business Set-Aside (Jun 2003) 41
52.219-8 Utilization of Small Business Concerns (Jul 2013) 41
52.219-9 Small Business Subcontracting Plan (Jul 2013) Alternate 1 (Oct 2001) 41
52.219-11 Special 8(a) Contract Conditions (Feb 1990) 41
52.219-12 Special 8(a) Subcontract Conditions (Feb 1990) 41
52.219-14 Limitations on Subcontracting (Nov 2011) 42
52.219-16 Liquidated Damages-Subcontracting Plan (Jan 1999) 42
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns (Jun 2003) 42

52.219-27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) 43
52.219-30 Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under The Women-Owned Small Business Program (Jul 2013) 43
52.222-1 Notice to the Government of Labor Disputes (Feb 1997) 45
52.222-3 Convict Labor (Jun 2003) 45
52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (Jul 2005) 45
52.222-21 Prohibition of Segregated Facilities (Feb 1999) 45
52.222-26 Equal Opportunity (Mar 2007) 45
52.222-36 Affirmative Action for Workers with Disabilities (Oct 2010) 45
52.222-37 Employment Reports on Veterans (Sep 2010) 45
52.222-40 Notification of Employee Rights Under the National Labor Relations Act. (Dec 2010) 45
52.222-54 Employment Eligibility Verification (Aug 2013) 45
52.223-6 Drug-Free Workplace (May 2001) 46
52.223-18 Contractor Policy to Ban Text Messaging While Driving (Aug 2011) 46
52.225-3 Buy American Act-Free Trade Agreements-Israeli Trade Act (Nov 2012) 46
52.225-5 Trade Agreements. (Nov 2013) 46
52.225-13 Restrictions on Certain Foreign Purchases (Jun 2008) 46
52.226-6 Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) 46
52.228-2 Additional Bond Security (Oct 1997) 46
52.228-11 Pledge of Assets (Jan 2012) 46
52.228-14 Irrevocable Letter of Credit (Dec 1999) 46
52.229-3 Federal, State, and Local Taxes (Feb 2013) 46
52.232-1 Payments (Apr 1984) 46
52.232-8 Discounts for Prompt Payment (Feb 2002) 46
52.232-11 Extras (Apr 1984) 47
52.232-17 Interest (Oct 2010) 47
52.232-23 Assignment of Claims (Jan 1986) 47
52.232-25 Prompt Payment (Jul 2013) 47
52.232-33 Payment By Electronic Funds Transfer-System For Award Management (Jul 2013) 47
52.232-39 Unenforceability of Unauthorized Obligations (Jun 2013) 47
52.232-40 Providing Accelerated Payments to Small Businesses (Dec 2013) 48
52.233-1 Disputes (Jul 2002) 48
52.233-3 Protest after Award (Aug 1996) 48
52.233-4 Applicable Law for Breach of Contract Claim (Oct 2004) 48

52.242-13 Bankruptcy (Jul 1995) 48
52.242-15 Stop-Work Order (Aug 1989) 48
52.242-17 Government Delay of Work (Apr 1984) 48
52.243-1 Changes-Fixed Price (Aug 1987) 48
52.244-6 Subcontracts for Commercial Items (Dec 2013) 48
52.245-1 Government Property (Apr 2012) Alternate I (Apr 2012) 48
52.246-2 Inspection of Supplies - Fixed-Price (Aug 1996) 48
52.246-11 Higher-Level Contract Quality Requirement (Feb 1999) 48
52.246-16 Responsibility for Supplies (Apr 1984) 49
52.247-34 F.o.b. Destination (Nov 1991) 49
52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments (Apr 1984) 49
52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form) (Apr 1984) 49
52.249-2 Termination for Convenience of the Government (Fixed-Price) (Apr 2012) 49
52.249-8 Default (Fixed-Price Supply and Service) (Apr 1984) 49
52.252-2 Clauses Incorporated by Reference (Feb 1998) 49
52.252-4 Alterations in Contract (Apr 1984) 50
52.246-16 Responsibility for Supplies (Apr 1984) 50
52.253-1 Computer Generated Forms (Jan 1991) 51
Section C AGAR Clauses 51
452.209 – 71 Assurance Regarding Felony Conviction or Tax Delinquent Status For Corporate Applicant 51
452.211-74 Period of Performance (Feb 1988) 51
452.216-73 Minimum and Maximum Contract Amounts (Feb 1988) 51
52.247-70 Delivery Location (Feb 1988) 52

Change Control

Date	Source	Author	Approver	Description of Changes
09/01/2013	KCCO	Various	POSS	Updated Version
10/31/2013	KCCO	Boyd	POSS	P. 1, Part 1, revised to reflect FAC 2005-70 (Effective September 30, 2013) is most current FAC.
10/31/2013	KCCO	POSS	POSS	Typo corrections to MSCP dated September 1, 2013: P.20, Part 3, Section A.2.4.b.x.A. and B. P.21, Part 3, Section A.2.4.b.xi.B. P.23, Part 3, Section A.2.4.c.vii to ix. P.26, Part 3, Section A.2.4.g.viii.
10/31/2013	KCCO	Houston	POSS	P.34, Part 3, Section B., added FAR Clause 52.203-17
10/31/2013	KCCO	Whitaker	POSS	P.40, Part 3, Section B, 52.211-11(a) “Bakery Flour Mix Products” changed to read “Bakery Flour Mix.”
10/31/2013	KCCO	Cole	POSS	P.47, Part 3, Section B., added FAR Clause 52.232-99
02/05/2014	KCCO	Houston	POSS	Revised through current FAC 2005-72
04/30/2014	KCCO	Houston	POSS	Insert 52.219-11 and 52.219-12
5/20/14	KCCO	Houston	POSS	Deleted 452.209-70, date changed on 52.203-17, added 52.232-40

Part 1 Instructions to Bidders

This solicitation, called the Master Solicitation for Commodity Procurements (MSCP), is used for the solicitation of bids and award of contracts for various commodities under domestic and foreign food assistance programs administered by the Kansas City Commodity Office (KCCO). KCCO will periodically issue invitations for bids (IFB), available on the Web Based Supply Chain Management (WBSCM) public procurement page, and available through links on the Commodity Operations website and the Federal Business Opportunities (FBO) website. Contract functions, such as, viewing WBSCM Purchase Orders (i.e., contract) and shipping instructions, providing Advance Shipping Notices (ASN), and invoicing are performed in WBSCM.

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

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

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

http://acquisition.gov/far/index.html
http://www.dm.usda.gov/procurement/policy/agar.html

This version of the MSCP incorporates clauses and provisions in effect through **FAC 2005-72. For FAC 2005-72, this includes clauses and provisions effective as of February 5, 2014.**

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) Be a federally or state licensed warehouse and be on CCC's List of Authorized Warehouses, or have a put through agreement or other means to assure timely delivery through an export elevator 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) Be a federally or state licensed warehouse and be on CCC's List of Authorized 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. The original laker vessel shall be loaded at the federally or state licensed warehouse and trans-shipped to a larger ocean-going vessel most commonly in the St. Lawrence Seaway.

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

2. Submission of Bids

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

(b) All prospective bidders are required to submit offers electronically via the USDA Web Based Supply Chain Management (WBSCM) system. All offers are subject to all requirements of WBSCM and the invitation, including but not limited to—

(i) Obtaining a USDA eAuthentication logon ID and password to access WBSCM. (Contact the WBSCM Help Desk at (877) 927-2648 or WBSCMhelp@ams.usda.gov for information regarding logon IDs, passwords, and WBSCM system questions or concerns.)

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

(1) Any failure of the bidder's computer hardware or software;
(2) Availability of the ISP;
(3) Delay in transmission due to the speed of the modem;
(4) Delay in transmission due to excessive volume of Internet traffic.

(c) When authorized in an IFB, hard copy bids sent through regular mail or hand-delivered must be sealed in an envelope marked with the name and address of the bidder. Bids submitted by express mail shall be sealed inside a second envelope. All envelopes shall be plainly marked: "Do Not Open Until Prescribed Time Under Invitation for Bid Number (enter appropriate number)." For express mail bids, this statement shall be printed clearly on the outer express envelope, not the mailing label.

3. Period of Acceptance of Bids

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

4. Evaluation of Bids

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

(i) For commodities purchased for domestic programs, the total cost to the Government to deliver the product to the ultimate destination, or;

(ii) For commodities purchased for international programs, the lowest-landed cost to the Government to deliver the products to overseas destination, or;

(iii) For commodities purchased for instore delivery, the total cost to the Government including location and storage rates.

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

(b) HUBZone Program

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

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

For agricultural commodities procured for domestic food distribution programs:
In accordance with 15 U.S.C. 657a, the price evaluation preference shall be:

(i) 10% for the portion of a contract to be awarded that is not greater than 25% of the total volume being procured for each commodity in a single invitation;

(ii) 5% for the portion of a contract to be awarded that is greater than 25%, but not greater than 40%, of the total volume being procured for each commodity in a single invitation; and

(iii) 0% for the portion of a contract to be awarded that is greater than 40% of the total volume being procured for each commodity in a single invitation.

Section B FAR Provisions

52.204-8 Annual Representations and Certifications (Jan 2014)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____ [insert NAICS code].

(2) The small business size standard is _____ [insert size standard].

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

(b)(1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

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

[ ] (i) Paragraph (d) applies.

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

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

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

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

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

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

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

(iii) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the provision at 52.204-7, System for Award Management.

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

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

(B) Exceed the simplified acquisition threshold; and

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

(v) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation. This provision applies to solicitations using funds appropriated in fiscal years 2008, 2009, 2010, or 2012.

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

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

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

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

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

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

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

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

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

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

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

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

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

(xvii) 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at 52.225-3.

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

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

(C) If the acquisition value is $50,000 or more but is less than $79,507, the provision with its Alternate II applies.

(D) If the acquisition value is $79,507 or more but is less than $100,000, the provision with its Alternate III applies.

(xviii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

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

(xx) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

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

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

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

(2) The following certifications are applicable as indicated by the Contracting Officer: [Contracting Officer check as appropriate.]

__ (i) 52.219-22, Small Disadvantaged Business Status.

(A) Basic.

(B) Alternate I.

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

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

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

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

(vi) 52.227-6, Royalty Information.

(A) Basic.

(B) Alternate I.

(vii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

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

FAR Clause #	Title	Date	Change
_____	_____	_____	_____

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

(End of provision)

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

(B) Have ☐have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with

obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks "have", the offeror shall also see H52.209-7H, if included in this solicitation);

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

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

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

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

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

(2) Examples.

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

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

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

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

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

(a)(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 of $150,000.)

52.209-7 Information Regarding Responsibility Matters (Jul 2013)

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

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

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

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

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

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

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

(c) If the offeror checked "has" in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (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 inexcess of $100,000.

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

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

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management database via https://www.acquisition.gov (see 52.204-7).

(End of provision)

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

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

(a) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service
Specifications Section, Suite 8100
470 East L'Enfant Plaza,
SW Washington, DC 20407
Telephone (202) 619-8925
Facsimile (202) 619-8978.

(b) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (a) of this provision. Additional copies will be issued for a fee.

(End of provision)

52.214-3 Amendments to Invitations for Bids (Dec 1989)
(See 52.252-3 for Alterations to this provision.)

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)

52.214-22 Evaluation of Bids for Multiple Awards (Mar 1990)
(See 52.252-3 for Alterations to this provision.)

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.)

52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999)
(See 52.252-3 for Alterations to this provision.)

52.225-4 Buy America Act- Free Trade Agreements-Israeli Trade Act Certificate (Nov 2012)

(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, Panamanian, 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 offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—

Free Trade Agreements—Israeli Trade Act": Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, 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 $202,000 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 (Jan 2005)

(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 $202,000 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.)

52.225-25 Prohibitions on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran - Representation and Certifications (Dec 2012)

52.232-15 Progress Payments Not Included (Apr 1984)

52.232-40 Providing Accelerated Payment To Small Business Subcontractors (Dec 2013)

52.233-2 Service of Protest (Sep 2006)
Location where a protest may be served on the Contracting Officer:
The issuing office as indicated in the IFB.
(Applicable for all contracts expected to exceed the Simplified Acquisition Threshold of $150,000.)

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

52.252-3 Alterations in Solicitation (Apr 1984)
Portions of this solicitation are altered as follows:

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

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

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

Section C AGAR Provisions

452.204-70 Inquiries (Feb 1988)
Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the Contracting Officer issuing the solicitation about any aspect of this requirement prior to contract award.

452.216-72 Evaluation Quantities—Indefinite Delivery Contract (Feb 1988)
To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation, and will add other direct costs if applicable.
(Applicable for indefinite delivery contracts.)

452.219-70 Size Standard and NAICS Code Information (Sep 2001)

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

Commodity	**(USDA Commodity Requirement)**	**NAICS Code**	**Small Business Size Standard**
All Purpose Wheat Flour/Bread Flour Bakery Flour Products Barley Buckwheat Products Bulgur Wheat/Soy - Fortified Bulgur Corn Products Cornmeal Corn-Soy Blend Corn-Soy Blend Plus Corn-Soy Milk Instant Corn-Soy Milk Inst. Corn-Soya Masa Flour Soy-Fortified Cornmeal Soy-Fortified Sorghum Grits Wheat Flour Wheat Soy Blend Wheat Soy Milk	(WFBF) (BF) (BAR) (BWP) (BWSF) (CP) (CM) (CSB) (CSBP) (CSM) (ICSM) (MF) (SFCM) (SFSG) (WF) (WSB) (WSM)	311211	500
Milled Rice (Bagged) Milled Rice (Bulk) Rice Products	(MR) (KCPG) (RP)	311212	500
Crude or Refined Corn Oil Corn Oil	(BOT) (CO)	311221	750
Bulk Refined Soybean Oil Crude Degummed Soybean Oil Crude Sunflower Seed Oil Soybean Meal (Bulk) Sunflower Seed Butter Sunflower Seed Oil Value Added Soy Products	(BOT) (BOT) (BOT) (KCPG) (SSB) (SFSO) (VASP)	311224	1,000
Vegetable Oil Vegetable Oil Products	(VO) (VP)	311225	1,000
Fortified R-T-E Cereals Instant Rice Baby Cereal Processed Cereal Products	(FC) (RC) (PC)	311230	1,000
Emergency Food Products Ready-To-Use Supplementary Food Ready-To-Use Therapeutic Food	(EFP) (RUSF) (RUTF)	311340	500
Dehydrated Potato Products Dehydrated Soup Mix	(DPP) (DSM)	311423	500

Commodity	(USDA Commodity Requirement)	NAICS Code	Small Business Size Standard
Butter	n/a	311512	500
Cheese (Bulk) Cheese (Processed) Mozzarella Cheese	(BCD) (PCD) (MCD)	311513	500
Dried Dairy Ingredients Evaporated Milk Infant Formula Instant Nonfat Dry Milk Nonfortified Nonfat Dry Milk Nonfortified Nonfat Dry Milk-Export Ultra High Temperature Milk	(DDI) (EVD) (IFD) (IMD) (DMD) (DME) (UHD)	311514	500
Tallow	(BOT)	311613	500
Canned Salmon	(CPS)	311710	500
Crackers (Saltine)	(CR)	311821	750
Bakery Flour Mix Macaroni and Cheese (Dry) Pasta Products	(BFM) (MC) (PA)	311824	**500**
Peanut Products	(PP)	311911	500
Bags	(KCP BAGS)	314910	500
Twine	(KCP BAGS)	314994	**500**
Needles	(KCP BAGS)	339993	500
Bagged Grain Dry Edible Beans Grain (Bulk) Peas & Lentils	(KCBG) (DEB) (KCPG) (PL)	311999	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, cashier's 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.

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

- Dry beans, peas and lentils procured for use in International Programs.

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

(c) “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.

(d) “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.

(e) “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.

(f) “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.

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

(h) “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.

(i) “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.

(j) “Instore” means within a USDA-approved warehouse.

(k) “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.

(l) “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.

(m) "Plant" is defined as the prime contractor's or subcontractor's facility where an agricultural commodity is made or processed from raw materials into the finished product, or assembled from components, or packaged as provided in the contract specifications, or for international programs only, warehoused after processing/assembling/ packaging, and from which the supply is delivered Intermodal Plant, Intermodal Bridge, f.a.s. vessel, and/or f.o.b. vessel in performance of the contract. It is understood that an offeror's plant location in an offer represents the offeror's plant as defined in this section.

(n) "WBSCM Purchase Order" or "WBSCM PO" means a contract that is accessible in the WBSCM System. "Contract" is as defined by FAR, i.e., a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. See FAR 2.101 for the full definition.

(o) "World Trade Organization Government Procurement Agreement (WTO GPA) country" means any of the following countries: Armenia, 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

Contractors shall submit invoices through WBSCM using the invoicing function. WBSCM will require an invoice be created against a particular WBSCM purchase order; and the completion of data entry for required WBSCM invoicing fields is mandatory. In order to receive payment, all required documentation must be completed/provided in WBSCM by the contractor, goods recipient representative, or inspector including—

1. Advance Shipping Notice(s) (ASN);
2. Goods Receipt, (including attachments, as applicable; see paragraphs (a) through (j) regarding other proof of delivery documents for various delivery bases);
3. Required inspection certificates (see paragraphs (a) through (j) for the type of inspection evidence required); and
4. Other information required for the applicable delivery basis (outlined in paragraphs (a) through (j) below):

When required as part of WBSCM invoice submission, 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. The Government prefers that partial pounds be rounded to whole pounds. For the Bill of Lading, ASN, and the Invoice, partial pounds should be omitted on odd numbered purchase order items and raised to the next full pound on even numbered purchase ordered items. If whole pounds are not feasible, the Bill of Lading, ASN, and the Invoice weights shall be rounded to as few of digits to the right of the decimal as feasible, but should not contain, more than three digits to the right of the decimal.

(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:

An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number and PO 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 Programs to be delivered outside CONUS where acceptance occurs at destination:

An invoice must include:

(i) Name and address of the contractor;
(ii) Invoice date and number;
(iii) Contract number and PO 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;

(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) A signed and dated "Contractor's Invoice Certification" evidencing the date of delivery and quantity (units) delivered in good condition.

(A) 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

(B) 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 and intermodal bridge, and intermodal bridge-port point for the Great Lakes shipments with acceptance occurring at origin (e.g., checkloaded commodities):

The contractor shall submit the following proof of delivery and/or inspection documents:

(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, report documenting packaged product quantity (actual units and net weight) and date the packaged product is placed at contracted delivery point:
  (1) Copy of Government-issued inspection certificate;
  (2) Copy of FGIS Official (original) inspection certificates, if required;
(vii) Statement from the contractor certifying fumigation of product, if required;
(viii) 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
(ix) 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 (e.g., non-checkloaded commodities):

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, report 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;

(x) 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, 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 WBSCM Good Receipt entered by the freight forwarder/unloading stevedore, or proof of delivery document signed by the unloader or receiver at the FAS position showing count and over, short and damage (e.g., Dock Receipt, Consignee Receipt).

(xi) 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 - 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
(viii) Copy of checkloading certificate as issued by USDA.

(h) 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 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.

(i) 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 the 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, tallow, and soybean meal), 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, tallow, and soybean meal, 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. U.S. Origin of Agricultural Commodities - Waiver for Certain Ingredients

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

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

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

Waived Ingredients	
Nutrient	**Fortificant Form**
*no nutrient listed	Butylated hydroxy anisole
*no nutrient listed	Butylated hydroxy toluene
Biotin	Biotin 1%
Iodine	Potassium Iodide
Iron	Iron-Sodium EDTA
Pantothenic acid	Calcium D-Pantothenate
Selenium	Sodium Selenite (1.5%)
Vitamin B1	Thiamine mononitrate
Vitamin B12	Vitamin B12 0.1% or 1% Spray Dried
Vitamin B2	Vitamin B2 fine powder
Vitamin B2	Riboflavin
Vitamin B3	(Niacin) Nicotinic Acid
Vitamin B6	Pyridoxine hydrochloride
Vitamin B9	Folic Acid

Waived Ingredients	
Nutrient	**Fortificant Form**
Vitamin C	Ascorbic acid
Vitamin K1	Dry Vitamin K1 5% Water Dispersible/Phylloquinon 5%

8. Shipping and Delivery Instructions

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

9. Shipment and Delivery

(a) For Domestic Programs:

(i) The receiving warehouse, "Ship To" party shown on WBSCM purchase order, shall be called at least 24 hours in advance to schedule an unloading appointment. This is not required for rail shipments.

(ii) The contractor shall submit an ASN for each conveyance (railcar, truck, or ocean containers) shipped under the purchase order. ASN must be created in WBSCM (through data entry or upload) on the day of shipment if possible but not later than 24 hours after shipment from the plant.

(iii) Contractors shall notify the contracting officer in advance if shipments will not be made by the final shipment date under the contract.

(b) For International Programs - Packaged Commodities:

(i) The Freight Forwarder identified on the WBSCM purchase order shall be contacted prior to shipment.

(ii) The contractor shall submit an ASN for each conveyance (railcar, truck, or ocean containers) shipped under the purchase order. ASN must be created in WBSCM (through data entry or upload) on the day of shipment if possible but not later than 24 hours after shipment from the plant.

(iii) 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

(a) Seals on Transportation Conveyances for <u>Domestic</u> Nutrition Assistance Programs

Suppliers of commodities, products and/or services shall be responsible for placing a seal(s) on all cargo doors of each transportation conveyance upon completion of loading, partial unloading, inspection, or servicing.

Seals must meet the American Society for Testing and Materials (ASTM) Standards. ASTM Standards may be found at http://www.astm.org. Seals shall be 1/8-inch diameter cable, high security bolt, barrier-type, or equivalent device which can only be removed by bolt cutter type tools. Seals shall be sequentially numbered. The contractor or its agent shall provide a sufficient number of barrier- type seals to ensure security of the load while in route through final destination.

The seal numbers shall be documented on the Bill of Lading, which must be signed or acknowledged by the carrier or its agent.

Deliveries will be rejected, in which seals have not been used to secure all cargo doors, if:

- the seal listed on the Bill of Lading does not match the seal number recorded on the Bill of Lading;
- the seal is broken;
- the seal is missing; or
- the seal has been removed prior to the transportation conveyance reaching its unloading point.

A rejected conveyance will only be accepted after a Condition of Container Inspection has been performed by Agricultural Marketing Services (AMS) or Federal Grain Inspection Service (FGIS). AMS or FGIS must subsequently issue a Certificate of Quality and Condition that documents that the Condition of Container meets the applicable U.S. Standards for Condition of Food Containers. If this inspection is performed at a location other than the contracted delivery point all cargo doors must be sealed and the seal numbers documented by the Federal Inspection Agency on the Certificate.

Additional information regarding Grading, Certification and Verification of Conditions of Container Inspection arrangements are available by accessing the AMS website at:
http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateA&navID=ProcessedProductInspectionService&rightNav1=ProcessedProductInspectionService&topNav=&leftNav=&page=ProcessedFVGrading&resultType=

The Contractor is responsible for payment of all fees incurred as a result of a Condition of Container Inspection.

(b) Seals on Transportation Conveyances for International Food Aid Programs

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, unless stated otherwise in the IFB.

(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.

(f) The contractor shall submit Advance Shipping Notifications (ASNs) in WBSCM within 24 hours of completion of 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 International Food Aid Programs.

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

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

14. Acceptance

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

Section B FAR Clauses

52.202-1 Definitions (Nov 2013)

52.203-3 Gratuities (Apr 1984)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000.)

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

52.203-6 Restrictions on Subcontractor Sales to the Government (Sep 2006)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000.)

52.203-7 Anti-Kickback Procedures (Oct 2010)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000.)

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000.)

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000.)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000.)

52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010)
(Applicable for contracts with values expected to exceed $5 million, and with a performance period of 120 days or more.)

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

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

(b) *Display of fraud hotline poster(s).*
Except as provided in paragraph (c)—
(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—
(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.
(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.
(3) Any required posters may be obtained as follows:

Poster(s)	*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.)

52.203-17 Contractor Employee Whistleblower Rights And Requirement To Inform Employees Of Whistleblower Rights (Apr 2014)

52.204-4 Printed or Copied Double-Sided or Postconsumer Fiber Content Paper (May 2011)

52.204-7 System for Award Management (Jul 2013)

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Jul 2013)

(a) Definitions. As used in this clause:

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

"First-tier subcontract" means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

"Months of award" means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

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

(1) *Salary and bonus*.

(2) *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

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

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

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

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

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information

(d)(1) *Executive compensation of the prime contractor*. As a part of its annual registration requirement in the System for Award Management (SAM) database (FAR provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

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

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

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

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

(2) *First-tier subcontract information.* Unless otherwise directed by the contracting officer, or as provided in paragraph (h) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of $25,000 or more, the Contractor shall report the following information at http://www.fsrs.gov for that first-tier subcontract. (The Contractor shall follow the instructions at http://www.fsrs.gov to report the data.)

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

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

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

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

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

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

(ix) The prime contract number, and order number if applicable. (x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

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

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

(3) *Executive compensatioin of the first-tier subcontractor.* Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of $25,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at http://www.fsrs.gov , if—

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

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

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

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

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than $25,000 to avoid the reporting requirements in paragraph (d).

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

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

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

(h) The FSRS database at http://www.fsrs.gov will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM database information is incorrect, the contractor is responsible for correcting this information.

(End of clause)

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

52.209-1 Qualification Requirements (Feb 1995)
Government contact for information on the standards for qualification: Kansas City Commodity Office at:
http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas-vr

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Aug 2013)
(Applicable for contracts exceeding $30,000.)

52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management database via https://www.acquisition.gov.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

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

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also 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) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

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

(End of clause)

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

52.211-5 Material Requirements (August 2000)

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

NOTE: Liquidated damages are based upon delivery periods for f.o.b. destination contracts 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 (http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas)	**USDA Commodity Requirement**	**Rate**	**Per Net Weight**
All Purpose Wheat Flour/Bread Flour Bagged Grain Barley Buckwheat Products Bulgur Wheat/Soy - Fortified Bulgur Canned Salmon Corn Oil Cornmeal Corn-Soy Blend Corn-Soy Blend Plus Corn-Soy Milk Instant Corn-Soy Milk Dehydrated Potato Products Dried Dairy Ingredients Dry Edible Beans Emergency Food Products Inst. Corn-Soya Masa Flour Milled Rice (bagged) Peas & Lentils Ready-To-Use Supplementary Food Ready-To-Use Therapeutic Food Soy-Fortified Cornmeal Soy-Fortified Sorghum Grits Sunflower Seed Oil Value Added Soy Products Vegetable Oil Wheat Soy Blend Wheat Soy Milk	(WFBF) (KCBG) (BAR) (BWP) (BWSF) (CPS) (CO) (CM) (CSB) (CSBP) (CSM) (ICSM) (DPP) (DDI) (DEB) (EFP) (MF) (MR) (PL) (RUSF) (RUTF) (SFCM) (SFSG) (SFSO) (VASP) (VO) (WSB) (WSM)	$ 0.11	Cwt/day
Bakery Flour Products **Bakery Flour Mix** Corn Products Wheat Flour	(BF) (BFM) (CP) (WF)	$ 0.15	Cwt/day
Rice Products	(RP)	$ 0.20	Cwt/day
Crackers (Saltine) Instant Rice Baby Cereal Pasta Products	(CR) (RC) (PA)	$ 0.30	Cwt/day

Commodity (http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas)	USDA Commodity Requirement	Rate	Per Net Weight
Processed Cereal Products Vegetable Oil Products	(PC) (VP)	$ 0.35	Cwt/day
Cheese (Bulk) Cheese (Processed) Evaporated Milk Fortified R-T-E Cereals Infant Formula Instant Nonfat Dry Milk Mozzarella Cheese Macaroni and Cheese Nonfortified Nonfat Dry Milk Nonfortified Nonfat Dry Milk-Export Peanut Products Sunflower Seed Butter Ultra High Temperature Milk	(BCD) (PCD) (EVD) (FC) (IFD) (IMD) (MCD) (MC) (DMD) (DME) (PP) (SSB) (UHD)	$ 0.45	Cwt/day
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)

(a) A variation in quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping or packing, or allowances in manufacturing process, and then only to the extent, if any specified in paragraph (b) of this clause.

(b) The permissible variation shall be limited to:

Zero percent increase

2% percent decrease.

This decrease shall apply to each purchase order.

52.214-26 Audit and Records—Sealed Bidding (Oct 2010)
(Applicable for contracts exceeding $700,000.)

52.214-27 Price Reduction for Defective Cost or Pricing Data-Modifications- Sealed Bidding (Aug 2011)
(Applicable for contracts exceeding $700,000.)

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Oct 2010)
(Applicable for contracts exceeding $700,000.)

52.219-3 Notice of Total HUBZone Set-Aside (Nov 2011)
(Applicable when the IFB stipulates the procurement is a total HUBZone set-aside.)

52.219-6 Notice of Total Small Business Set-Aside (Nov 2011)
(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 (Jul 2013)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000.)

52.219-9 Small Business Subcontracting Plan (Jul 2013) Alternate 1 (Oct 2001)
(Applicable for contracts exceeding $650,000.)

52.219-11 Special 8(a) Contract Conditions (Feb 1990)

52.219-12 Special 8(a) Subcontract Conditions (Feb 1990)

(a) The Small Business Administration (SBA) has entered into Contract No._____ [*insert number of contract*] with the _____ [*insert name of contracting agency*] to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The _____ [*insert name of subcontractor*], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. _____ [*insert number of contract*] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the _____ [*insert name of contracting agency*] with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the _____ [*insert name of contracting agency*].

(4) That it will notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the _____ [*insert name of contracting agency*].

(End of clause)

52.219-14 Limitations on Subcontracting (Nov 2011)
(Applicable to any portion of the requirement that is set aside for small business and the contract amount is expected to exceed $150,000; and is applicable to all contracts awarded under the 8(a) program.)

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

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns (Jun 2003)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement*. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The [insert name of SBA's contractor] will notify the USDA Kansas City Commodity Office's Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

52.219-27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (Applicable when the IFB stipulates the procurement includes a service-disabled veteran-owned small business set-aside.)

52.219-30 Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under The Women-Owned Small Business Program (Jul 2013)

(a) *Definitions.*

"Women-owned small business (WOSB) concern eligible under the WOSB Program" (in accordance with 13 CFR 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

"WOSB Program Repository" means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *Applicability*. This clause applies only to—

(1) Contracts that have been set aside or reserved for WOSB concerns eligible under the WOSB Program;

(2) Part or parts of a multiple-award contract that have been set aside for WOSB concerns eligible under the WOSB Program; and

(3) Orders set aside for WOSB concerns eligible under the WOSB Program, under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).

(c) General.

(1) Offers are solicited only from WOSB concerns eligible under the WOSB Program. Offers received from concerns that are not WOSB concerns eligible under the WOSB program shall not be considered.

(2) Any award resulting from this solicitation will be made to a WOSB concern eligible under the WOSB Program.

(3) The Contracting Officer will ensure that the apparent successful offeror has provided the required documents to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(d) *Agreement*. A WOSB concern eligible under the WOSB Program agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including cost of materials).

(e) *Joint Venture*. A joint venture may be considered a WOSB concern eligible under the WOSB Program if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The WOSB participant of the joint venture is designated in the System for Award Management as a WOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions-

(i) Setting forth the purpose of the joint venture;

(ii) Designating a WOSB concern eligible under the WOSB Program as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the WOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the WOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the WOSB contract performed by the joint venture.

(4) The joint venture must perform the applicable percentage of work required in accordance with paragraph (d) above; and

(5) The procuring activity executes the contract in the name of the WOSB concern eligible under the WOSB Program or joint venture.

(f) *Nonmanufacturer*. A WOSB concern eligible under the WOSB Program that is a non-manufacturer, as defined in 13 CFR 121.406(b) or 19.102(f), may submit an offer on a WOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.

(End of clause)

(Applicable when the IFB stipulates the procurement is a set-aside under the Women-Owned Small Business Program.)

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

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

52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (Jul 2005)
(Applicable for contracts exceeding $150,000.)

52.222-21 Prohibition of Segregated Facilities (Feb 1999)

52.222-26 Equal Opportunity (Mar 2007)

52.222-35 Equal Opportunity for Veterans (Sep 2010)
(Applicable for contracts exceeding $100,000.)

52.222-36 Affirmative Action for Workers with Disabilities (Oct 2010)
(Applicable for contracts exceeding $15,000.)

52.222-37 Employment Reports on Veterans (Sep 2010)

52.222-40 Notification of Employee Rights Under the National Labor Relations Act. (Dec 2010)
(Applicable for contracts over the simplified acquisition threshold and for indefinite-quantity contracts where the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold.)

52.222-54 Employment Eligibility Verification (Aug 2013)
(Applicable for contracts over the simplified acquisition threshold, except those that—

(a) Are for a period of performance of less than 120 days; or

(b) Are only for—

(1) Commercially available off-the-shelf items;

(2) Items that would be COTS items, but for minor modifications (as defined at paragraph (3)(ii) of the definition of "commercial item" at 2.101**);**

(3) Items that would be COTS items if they were not bulk cargo.)

52.223-6 Drug-Free Workplace (May 2001)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000 and to all contracts awarded to an individual.)

52.223-18 Contractor Policy to Ban Text Messaging While Driving (Aug 2011)

52.225-3 Buy American Act-Free Trade Agreements-Israeli Trade Act (Nov 2012)
(Applicable for contracts valued at $25,000 or more but less than $202,000 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. (Nov 2013)
(Applicable for contracts valued at $202,000 or more and only to the packaging and container components utilized by commodity vendors selling agricultural products to KCCO; not applicable for empty 50 kg polypropylene bags, needles, and twine.)

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

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

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

52.228-11 Pledge of Assets (Jan 2012)
(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 (Feb 2013)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000.)

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

52.232-8 Discounts for Prompt Payment (Feb 2002)

52.232-11 Extras (Apr 1984)

52.232-17 Interest (Oct 2010)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000.)

52.232-23 Assignment of Claims (Jan 1986)
USDA forms CCC-251 (Notice of Assignment) and CCC-252 (Instrument of Assignment) may be obtained at:
http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas
or the contractor may use its own forms provided the forms are essentially consistent with CCC-251 and CCC-252 in content.

52.232-25 Prompt Payment (Jul 2013)

52.232-33 Payment By Electronic Funds Transfer-System For Award Management (Jul 2013)

52.232-39 Unenforceability of Unauthorized Obligations (Jun 2013)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse- wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

52.232-40 Providing Accelerated Payments to Small Businesses (Dec 2013)

52.233-1 Disputes (Jul 2002)

52.233-3 Protest after Award (Aug 1996)

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

52.242-13 Bankruptcy (Jul 1995)
(Applicable for contracts exceeding the Simplified Acquisition Threshold of $150,000.)

52.242-15 Stop-Work Order (Aug 1989)

52.242-17 Government Delay of Work (Apr 1984)

52.243-1 Changes-Fixed Price (Aug 1987)

52.244-6 Subcontracts for Commercial Items (Dec 2013)
(Additionally, the clause with its Alternate I is applicable for contracts exceeding $5 million.)

52.245-1 Government Property (Apr 2012) Alternate I (Apr 2012)
(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":

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 aid 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: Hhttp://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pasH.)

(The ISO 9001-2000 standard can be ordered from the ANSI Electronics Standards Store at http://www.ansi.org. Note: Official ISO certification is not required.)
(End of Clause)

52.246-16 Responsibility for Supplies (Apr 1984)
See 52.252-4 for Alterations to this Clause

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

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

52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form) (Apr 1984)
(Applicable for contracts of $150,000 or less.)

52.249-2 Termination for Convenience of the Government (Fixed-Price) (Apr 2012)
(Applicable for contracts exceeding $150,000.)

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

52.252-2 Clauses Incorporated by Reference (Feb 1998)
This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:
http://acquisition.gov/far/index.html
http://www.usda.gov/procurement/policy/agar.html
(End of clause)

52.252-4 Alterations in Contract (Apr 1984)
Portions of this contract are altered as follows:

52.246-16 Responsibility for Supplies (Apr 1984)

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

52.253-1 Computer Generated Forms (Jan 1991)

Section C AGAR Clauses

452.209 – 71 Assurance Regarding Felony Conviction or Tax Delinquent Status For Corporate Applicant

(a)This award is subject to the provisions contained in sections 738 and 739 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, P.L. No. 112-55, Division A, as amended and/or subsequently enacted, regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by accepting this award the contractor acknowledges that it –

(1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and

(2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal or State law within 24 months preceding the award, unless a suspending and debarring official of the United States Department of Agriculture has considered suspension or debarment of the awardee, or such officer or agent, based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government.

(b) If the awardee fails to comply with these provisions, [insert agency name] may terminate this contract for default and may recover any funds the awardee has received in violation of sections 738 or 739, as amended and/or subsequently enacted.

(End of Clause)

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.)

52.247-70 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.)