



**United States
Department of
Agriculture**

**FARM SERVICE AGENCY
Kansas City, Missouri**

The USDA plans to procure services from one or more contractors, to conduct marine cargo discharge/delivery surveys at various foreign locations.

NOVEMBER 30, 2009

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(Jul 2009)	

Solicitation Form

1. Solicitation Number: KCCO-IPD-10-RFP-001

2. Solicitation Issue Date: November 30, 2009

3. Issued and Administered By:

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

4. Solicitation Type: Request for Proposals (RFP)

5. Written questions regarding this solicitation shall be submitted by e-mail, no later than December 3, 2009

george.pryor@kcc.usda.gov

6. Offers Due Date/Local Time: December 10, 2009 12:00 P.M.

7. Award Notification Date: By December 18, 2009, 2:30 P.M.

8. Public Release of Award Date: By December 21, 2009 P.M.

9. Solicitation Information Contact:

Name: George Pryor

Telephone Number: 816-823-1592

E-mail: george.pryor@kcc.usda.gov

10. Internet Address:

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

11. This Acquisition is:

/x/ Unrestricted

// Set-Aside for FAR Subchapter D, Socioeconomic Programs. Applicable competitive and noncompetitive set-asides (e.g. The 8(a) program) will be specified in the Government's periodic delivery order competition requests. Actual set-asides may vary for reasons such as expected small business contractor capacities, Federal procurement requirements, Government program needs, and budget. The Government estimates that approximately 5 to 100 percent of quantities under each delivery order competition will be set-aside for socioeconomic programs. The *nonmanufacturer rule* applies to any subcontracting arrangements pursuant to FAR Part 19.

12. Place of Performance: Marine cargo discharge/delivery services may be required at the following locations:

- **Lome**
- **Cotonou**
- **Douala**
- **Abidjan**

13. Submit invoices to:

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

For express mail:

Kansas City Commodity Office
International Procurement Division
Procurement Support Branch
USDA-Farm Service Agency
Beacon Facility- Mail Stop 8738
9240 Troost Ave
Kansas City, MO 64131-3005

For questions concerning invoices contact George Pryor at 816-823-1592.

14. For Delivery Order Competition:

Contract Type: // Definite Delivery/Definite Quantity
/x / Indefinite Delivery/Indefinite Quantity
/ / Fixed Price (Differential) with Economic Price Adjustment

Delivery orders shall be issued only by a USDA/KCCO contracting officer by mail, orally, by facsimile, or by electronic commerce methods.

15. Schedule of Services or Supplies: Marine cargo discharge/delivery services are anticipated to be required at the following locations:

Lome
Abidjan
Cotonou
Douala

16. Accounting and Appropriation Data: Funding for the survey contracts awarded under this solicitation will be provided through the applicable funding source used for the procurement of the

food aid that is to be surveyed.

17. Solicitation incorporates FAR provisions 52.212-1, 52.212-2, 52.212-3 and clauses 52.212-4 and 52.212-5. These provisions and clauses are included within this document.

18. USDA Contracting Officer

a. UNITED STATES OF AMERICA (*SIGNATURE OF CONTRACTING OFFICER*)

/s/

b. George E. Pryor, Contracting Officer

I. Standard Information

The Kansas City Commodity Office procures staple foods for use in various international food aid programs administered by the U.S. Agency for International Development and the USDA Foreign Agricultural Service. The purpose of the marine cargo discharge/delivery survey services is to ensure that all subject food aid cargoes are surveyed at discharge locations and, if applicable, customs and final delivery locations. The evidence gathered by surveyors and the survey reports issued as a result of the surveys performed are to be used by the Government to pursue shortage and damage claims.

Per FAR 15.306(a)(3), the government intends to evaluate proposals and make award without discussions.

Provisions and clauses in effect through FAC 2005-37 are incorporated into this RFP, as applicable.

Separate indefinite delivery/indefinite quantity requirements contracts shall be awarded for each country/location. The specific duties required are detailed in the Performance Work Statement in Part III of this solicitation. Offerors may submit proposals for more than one country/location; however, each country/location offer shall be submitted as a separate proposal, i.e., technical and price proposal specific for each country/location offer. A contractor may be awarded more than one contract. Quantities of cargo for each country/location will vary.

II. Contract Clauses

A. FAR 52.212-4 Contract Terms and Conditions—Commercial Items (Mar 2009)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes*. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes*. This contract is subject to the Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions*. The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) 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, contract line item number and, if applicable, the order number;
 - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
 - (vi) Terms of any discount for prompt payment offered;
 - (vii) Name and address of official to whom payment is to be sent;
 - (viii) Name, title, and phone number of person to notify in event of defective invoice;
- and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.—

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause. *Applicable to domestic firms only.*

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract 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; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to

comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title*. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability*. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances*. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. 3701](#), *et seq.*, Contract Work Hours and Safety Standards Act; [41 U.S.C. 51-58](#), Anti-Kickback Act of 1986; [41 U.S.C. 265](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. 423](#) relating to procurement integrity.

(s) *Order of precedence*. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at [52.212-5](#).
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The [Standard Form 1449](#).
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(t) Central Contractor Registration (CCR). *Not applicable to foreign firms.*

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the

CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding innovation and change-of-name agreements in FAR [Subpart 42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of [Subpart 42.12](#); and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see [Subpart 32.8](#), Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor’s CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(End of clause)

A.1 Addenda to FAR 52.212-4

1. Addendum to Paragraph (b) *Assignment*.

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 offeror may use its own forms provided the forms are essentially consistent with CCC-251 and CCC-252 in content.

2. Addendum to Paragraph (e) *Definitions*.

(1) “Breakbulk Vessel” means loose, non-containerized cargo.

(2) “COTR” means Contracting Officer Technical Representative duly authorized by the contracting officer

(3) “LASH” means a maritime industry abbreviation for "Lighter Aboard Ship." A specially constructed vessel equipped with an overhead crane for lifting

especially designed barges and stowing them into cellular slots in an athwart ship position

- (4) “Major damage” means damage that in the estimation of the surveyor exceeds USD \$20,000.
- (5) “NGO” means non-governmental organization which receives the food aid to be surveyed.
- (6) “TBL” means through bill of lading.
- (7) “Third party lab” means a laboratory meeting international ISO testing standards that is not affiliated/associated with either the ocean carrier or receiver involved in the shipment.

3. Addendum to Paragraph (i) *Payment*.

(3) *Electronic Funds Transfer (EFT)*.

Domestic firms, which are required to be registered in CCR pursuant to Paragraph (t) of this clause, will be paid by EFT. Clause [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration, is incorporated into domestic firms contracts.

4. Addendum to Paragraph (t) *Central Contractor Registration (CCR)*.

Foreign firms are exempted from the requirement to be registered in the CCR.

5. Addendum to Paragraph (u) *Submission of deliverables*.

All survey reports and related survey documentation shall be submitted concurrently with the associated invoice pursuant to Section A.1.5 Deliverables and invoice may be submitted electronically to the COTR.

(End of addenda)

A.2. Additional Clauses

FAR 52.204-4 Printed or Copied Double-Sided on Recycled Paper (Aug 2000)

AGAR 452.211-74 Period of Performance. (Feb 1988)

The period of performance of this contract is from December 18, 2009 through September 30, 2010.

(End of Clause)

AGAR 452.211-75 Effective Period of the Contract. (Feb 1988)

The effective period of this contract is from contract award date through September 30, 2010.

(End of Clause)

FAR 52.216-18 Ordering (Oct 1995)

FAR 52.216-19 Order Limitations. (Oct 1995)

- (a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than:

Bulk shipment:	1,000 metric tons
Breakbulk shipment:	75 metric tons
Container shipment:	1 container

The Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

- (b) Maximum order. The Contractor is not obligated to honor any order for a single item in excess of:

Bulk shipment:	65,000 metric tons
Breakbulk shipment:	40,000 metric tons
Container shipment:	400 Containers

- (c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

- (d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within three (3) days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

FAR 52.216-21 Requirements (Oct 1995)

- (a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

- (c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.
- (d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.
- (e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.
- (f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after 180 days past the expiration date of the contract. (End of clause)

FAR 52.217-8 Option to Extend Services (Nov 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within sixty (60) days prior to contract expiration date.

(End of clause)

FAR 52.217-9 Option to Extend the Term of the Contract (Mar 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within thirty (30) days of contract expiration; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

(End of clause)

FAR 52.232-18 Availability of Funds (Apr 1984)

FAR 52.232-19 Availability of Funds for the Next Fiscal Year (Apr 1984)

FAR 52.246-4 Inspection of Services-Fixed-Price (Aug 1996)

FAR 52.247-5 Familiarization with Conditions (Apr 1984)

4K52.246-1001 Condition of acceptance

Pursuant to FAR 46.501, acceptance constitutes acknowledgment that the services conform with applicable contract quality and quantity requirements. Formal acceptance shall occur when the Government approves the invoice for payment. In order to minimize administrative operating costs, contractor should enclose the following with each individual invoice for payment:

1. Completed survey report

Failure to provide this documentation may result in non-acceptance, causing a possible delay in invoice payment.

AGAR 452.246-70 Inspection and Acceptance (Feb 1988)

- (a) The Contracting Officer or the Contracting Officer's duly authorized representative will inspect and accept the supplies and/or services to be provided under this contract.
- (b) Inspection and acceptance will be performed at: United States Department of Agriculture, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri, 64133-4676.

(End of clause)

FAR 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 this/these address(es): <http://www.arnet.gov/far/>

(End of clause)

B. FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. (Sep 2009)

- (a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
 - (1) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).
 - (2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

(2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (MAR 2009) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (Mar 2009) (Pub. L. 111-5).

(5) [52.219-3](#), Notice of Total HUBZone Set-Aside (Jan 1999) ([15 U.S.C. 657a](#)).

(6) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

(7) [Reserved]

(8)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (June 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (Oct 1995) of [52.219-6](#).

(iii) Alternate II (Mar 2004) of [52.219-6](#).

(9)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (June 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (Oct 1995) of [52.219-7](#).

(iii) Alternate II (Mar 2004) of [52.219-7](#).

(10) [52.219-8](#), Utilization of Small Business Concerns (May 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

(11)(i) [52.219-9](#), Small Business Subcontracting Plan (Apr 2008) ([15 U.S.C. 637\(d\)\(4\)](#)).

(ii) Alternate I (Oct 2001) of [52.219-9](#).

(iii) Alternate II (Oct 2001) of [52.219-9](#).

(12) [52.219-14](#), Limitations on Subcontracting (Dec 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).

(13) [52.219-16](#), Liquidated Damages—Subcontracting Plan (Jan 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

(14)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii) Alternate I (June 2003) of [52.219-23](#).

(15) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Apr 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

- ___ (16) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- ___ (17) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) ([15 U.S.C. 657 f](#)).
- ___ (18) [52.219-28](#), Post Award Small Business Program Representation (Apr 2009) ([15 U.S.C. 632\(a\)\(2\)](#)).
- ___ (19) [52.222-3](#), Convict Labor (June 2003) (E.O. 11755).
- ___ (20) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (Aug 2009) (E.O. 13126).
- ___ (21) [52.222-21](#), Prohibition of Segregated Facilities (Feb 1999).
- ___ (22) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).
- ___ (23) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).
- ___ (24) [52.222-36](#), Affirmative Action for Workers with Disabilities (Jun 1998) ([29 U.S.C. 793](#)).
- ___ (25) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).
- ___ (26) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
- ___ (27) [52.222-54](#), Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)
- ___ (28)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- ___ (ii) Alternate I (May 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- ___ (29) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).
- ___ (30)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).
- ___ (ii) Alternate I (DEC 2007) of [52.223-16](#).
- ___ (31) [52.225-1](#), Buy American Act—Supplies (Feb 2009) ([41 U.S.C. 10a-10d](#)).
- ___ (32)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (June 2009) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).
- ___ (ii) Alternate I (Jan 2004) of [52.225-3](#).
- ___ (iii) Alternate II (Jan 2004) of [52.225-3](#).
- ___ (33) [52.225-5](#), Trade Agreements (Aug 2009) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).
- X (34) [52.225-13](#), Restrictions on Certain Foreign Purchases (June 2008) (E.O.’s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

___ (35) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ([42 U.S.C. 5150](#)).

___ (36) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) ([42 U.S.C. 5150](#)).

___ (37) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (Feb 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (38) [52.232-30](#), Installment Payments for Commercial Items (Oct 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (39) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) ([31 U.S.C. 3332](#)).

___ (40) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) ([31 U.S.C. 3332](#)).

___ (41) [52.232-36](#), Payment by Third Party (May 1999) ([31 U.S.C. 3332](#)).

___ (42) [52.239-1](#), Privacy or Security Safeguards (Aug 1996) ([5 U.S.C. 552a](#)).

___ (43)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

___ (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

___ (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

___ (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (May 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (Nov 2006) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Feb 2002) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

___ (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Feb 2009) ([41 U.S.C. 351](#), *et seq.*).

___ (7) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247).

___ (8) [52.237-11](#), Accepting and Dispensing of \$1 Coin (Sept 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(ii) [52.219-8](#), Utilization of Small Business Concerns (May 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iii) [Reserved]

(iv) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (June 1998) ([29 U.S.C. 793](#)).

(vii) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(viii) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(ix) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

____ Alternate I (Aug 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(x) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(xi) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb 2009) ([41 U.S.C. 351](#), *et seq.*).

(xii) [52.222-54](#), Employment Eligibility Verification (JAN 2009).

(xiii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xiv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

III. Contract Documents, Exhibits, Attachments

A. Performance Work Statement

A.1 Background

KCCO procures on behalf of its customer agencies, USDA-Foreign Agriculture Service and U.S. Agency for International Development, staple foods for use in foreign food aid distribution programs. The food is purchased in bulk and packaged form and transported overseas by ocean carriers to discharge port or foreign inland destination for delivery to NGOs or foreign governments. The Government's desire is that all food aid it has procured arrives at final destination without loss or damage. However, given the inherent nature of transporting bulk and packaged food long distances by sea and overland in foreign locales, there is a potential for loss or damage. To address this risk, the Government is seeking to hire marine cargo survey companies to attend at discharge, delivery, and other locations where containerized cargoes may be accessed in order to witness and examine cargoes, document the count and condition of these food aid shipments and activities related to disposition, and provide a written report. The survey reports issued by the Contractors will be used by the Government to fix responsibility for loss and damage to the food aid .

A.1.2 Scope Of Work

Contracts will be awarded on a country/location basis. The Contractor shall be the Government's surveyor for that country/location. If a food aid shipment is diverted from one location in the recipient country to another location in that country, the surveyor will still be responsible for surveying the cargo at the contracted rate.

The Government will issue task orders electronically; however, it reserves the right to issue task orders orally, or by facsimile, if necessary. Task order will include information detailing the cargo to be surveyed, the identifying information for the cargo, the vessel on which it is shipped, the destination(s), and contact information.

Bulk cargoes will be shipped in bulk and tanker vessels; packaged cargoes may be shipped in bulk or breakbulk vessels, lash barges, or in containers. Packaged cargo may be in 20 pound to 50 kilogram paper or polypropylene bags, cardboard cartons containing various consumer pack quantities, liquid 6/4 liter to 20 liter pails and 208 liter drums. Cargoes will be shipped port-to-port or on through bills of lading

where the cargoes are transported to inland delivery locations. For port-to-port shipments, the surveyor is required to attend at the discharge port. For shipments moving on through bills of lading (including containerized shipments), the surveyor is required to attend at the following locations:

1. Discharge port (where the transportation changes from an ocean mode of transportation to a land-based mode of transportation) including any customs stations located at port. This may be in a different country than the country/location for which the surveyor has a contract.
2. Delivery location.
3. For containerized shipments, at customs locations outside of port where containers are opened.
4. At any lightering operations on bulk or bulk with bagging shipments (conduct draft surveys on mother vessels and lighter vessels)

In general, we are seeking experienced survey firms, appropriately licensed and having the requisite knowledge, experience, and staffing to perform the work.

A.1.3 Applicable Documents

The following legal/regulatory documents are relevant to this acquisition:

- United States Carriage of Goods by Sea Act (COGSA);
- The Harter Act;
- 22 CFR 211—Transfer of Food Commodities for Food Use in Disaster Relief, Economic Development and Other Assistance;
- 7 CFR 1499—Foreign Donation Programs, Liability For Loss, Damage, Or Improper Distribution Of Commodities--Claims And Procedures;
- 7 CFR 1599—McGovern-Dole International Food for Education and Child Nutrition Program
- U.S. laws will govern in determining the conditions of this contract.

A.1.4 Required Services

The Contractor shall provide all management, supervision, and personnel to provide the following under the contract:

1. A single point of contact, including phone number and e-mail, for all matters under the contract(s).

For each cargo shipment:

2. A cargo survey by qualified, experienced surveyors at vessel discharge and, if any, the port customs station.
3. If cargo moves to inland location, a cargo survey by qualified, experienced surveyors at the final delivery location. On through bills of lading, survey will include loading on conveyance at discharge location for delivery.
4. For any containerized cargoes, a survey at customs locations between discharge port and final destination where containers are opened.

5. Documentation and evidence of:
 - a. Condition of container seal at discharge/customs/delivery. If broken or additional seals applied, must state where new seal was applied and new seal number.
 - b. Quantity of cargo removed by customs.
 - c. Quantity of cargo discharged/delivered
 - d. Condition of cargo discharged/delivered, including a complete description of the type and severity of the damage, and give probable cause of damage.
 - e. If containerized, the number and condition of containers discharge/delivered. Description/diagram/location of damage.
6. In the event of major loss, the Contracting Officer or COTR is notified immediately.
7. Evidence that written notice of loss was presented to carrier/carrier's representative within three days of discharge/delivery.
8. Observe, and provide documentation and evidence for the disposition of any damaged (including reconstituted) cargo.
9. The names, titles, and organizational affiliations of those present at discharge/customs inspection/delivery/destruction.
10. In the event of damaged cargo, obtain samples immediately and, subject to separate authorization by the Contracting Officer, provide timely analysis of suspected unfit cargo by an independent third party lab, if local health official is not available. Lab analysis should state if cargo is fit or unfit for human consumption and recommend disposition of such.
11. Certifications signed by third parties (vessel personnel, NGO representatives, customs representatives) establishing attendance by the Contractor at each location attended.
12. Submission of the preliminary form KC-334 upon completion of discharge/delivery and submission of the final form KC-334 with the survey report. This form is available at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pas-ex-cs>

A.1.5 Deliverables

1. The Contractor shall acknowledge receipt of task orders within three days of issuance.
2. The Contractor shall liaise with the KCCO, the applicable vessel agent, and NGO in order to coordinate on-time attendance and the service to be provided.
3. The Contractor shall attend and observe at the locations stipulated in task orders.
4. The Contractor shall provide a separate, written survey report and supporting documentation, in English or with translation, for each originating vessel's cargo and destination with sufficient detail and documentation so as to fix responsibility for losses occurring while cargo is under the care, custody, and control of the steamship company transporting the cargo. The report may be electronic or hard copy. A copy of the report should be sent to the receiver.

5. The complete report shall be submitted within 60 days of completion of discharge/delivery. If submission of the report cannot be made within 60 days, a request for extension must be made to the contracting officer by e-mail prior to the 60 day deadline, with justification for the delay and an estimated date of submission. If reconstitution is not expected to be completed within approximately two weeks, the report should still be submitted, with reconstitution documentation to follow upon completion of the process.
6. The Contractor shall provide timely replies to inquiries.

B. Inspection and acceptance

B.1. Quality Assurance Plan

The purpose of a Quality Assurance Plan (QAP), encompassed by the performance standards below, is to provide quality assurance for the cargo survey services performed under contracts awarded through this solicitation. This plan provides a basis for the Contracting Officer or COTR to evaluate the quality of the Contractor's performance. The oversight provided for in the contract and in this plan shall ensure service levels reach and maintain the required levels throughout the contract term. This plan shall provide the Contracting Officer or COTR with a proactive way to avoid unacceptable or deficient performance, and provide verifiable input for the required annual past performance evaluations.

C. Deliveries or performance

C.1. Performance Standards:

C.1.1 Frequency/Results

100 percent inspection. The Contracting Officer or COTR shall monitor and evaluate each deliverable to ensure satisfactory compliance with the performance standards set forth below. Failure to adhere to these standards may result negatively in evaluation of past performance or lead to termination of contract(s).

C.1.2. Standards

PERFORMANCE STANDARD	ACCEPTABLE QUALITY LEVEL (AQL)
1.A. A single point of contact for all matters under the contract.	100 percent compliance
1.B. The Contractor shall notify the Government of any key personnel changes. (Key personnel includes all surveyors and contact parties who will be involved with the surveys in the country/location.)	100 percent compliance within 24 hours of the personnel change, the Contractor shall provide in writing the name(s) and resume(s) of newly assigned key personnel.

PERFORMANCE STANDARD	ACCEPTABLE QUALITY LEVEL (AQL)
1.C. The Contractor shall acknowledge receipt of task orders within three working days of issuance.	95 percent compliance within three working days
1.D. The Contractor shall respond to all inquiries within seven working days.	100 percent compliance within 7 working days
1.E. The Contractor shall liaise with KCCO, the applicable vessel agent, and NGO in order to coordinate on-time attendance and the service to be provided.	100 percent compliance
1.F. Timely replies to inquiries per task order.	- 100 percent compliance within three working days, acknowledge receipt of CCC inquiries, if no mitigating circumstances. Determination of mitigation is at the discretion of the Government.
	- 100 percent compliance must provide requested information/ documentation within seven working days of request, if no mitigating circumstances. Determination of mitigation is at the discretion of the Government.
2.A. For <u>bulk</u> shipments, the following factors must be elements of a written report: <ul style="list-style-type: none"> - the quantity of cargo discharged/delivered - the condition of cargo discharged/delivered, including a complete description of the type and severity of the damage, and give probable cause of damage. - check vessel holds before and after discharge - conduct draft surveys to establish quantity on free-out shipments, at lightering operations and at ports where scales not available - personally observe and describe in detail the discharge/delivery process 	Report is sufficient to support the USDA claims recovery process.

PERFORMANCE STANDARD	ACCEPTABLE QUALITY LEVEL (AQL)
<ul style="list-style-type: none"> - scale information including scale location, scale type, date of last calibration, and other factors affecting scale weight accuracy - for TBL shipments, attendance and reporting on loading of land conveyance - for liquid cargoes and tallow, condition of pumping equipment and shore tanks/tank trucks - provide the actual (or estimated, if actual not available) weight loss of any shortage, or damaged cargo and the type and severity of damage - if cargo bagged by vessel interests, observe bagging operation and report the quantity bagged; document the total bag count and weight and the method of such determination; forward original stroke tallies with the survey report to document the quantity of cargo bagged and stacked. 	
<p>2.B. For <u>containerized</u> shipments, the following factors must be elements of a written report:</p> <ul style="list-style-type: none"> - the quantity of cargo discharged/delivered - the condition of cargo discharged/delivered, including a complete description of the type and severity of the damage, and give probable cause of damage. - check vessel holds before and after discharge - list container numbers and seal numbers at time of discharge/delivery - personally observe discharge/delivery and comment on container conditions and note container defects, if any - signed, legible, accurate original stroke tallies - attendance and reporting on accessing containers at customs locations 	<p>Report is sufficient to support the USDA claims recovery process.</p>
<p>2.C. For <u>breakbulk</u> shipments, the following factors must be elements of a written report:</p>	<p>Report is sufficient to support the USDA claims recovery process.</p>

PERFORMANCE STANDARD	ACCEPTABLE QUALITY LEVEL (AQL)
<ul style="list-style-type: none"> - the quantity of cargo discharged/delivered - the condition of cargo discharged/delivered, including a complete description of the type and severity of the damage, and give probable cause of damage. - check vessel holds before and after discharge - check vessel holds before and after discharge - personally observe discharge/delivery - signed, legible, accurate original stroke tallies - for TBL shipments, attendance and reporting on loading of land conveyance. 	
<p>2.D. For <u>bulk with bagging</u> shipments, the following factors must be elements of a written report:</p> <ul style="list-style-type: none"> - the quantity of cargo discharged/delivered - the condition of cargo discharged/delivered, including a complete description of the type and severity of the damage, and give probable cause of damage. - personally observe discharge/delivery - signed, legible, accurate original stroke tallies - for TBL shipments, attendance and reporting on loading of land conveyance. 	Report is sufficient to support the USDA claims recovery process.
<p>3.A. In the event of major loss, the Contracting Officer or COTR is notified immediately.</p>	100 percent compliance
<p>3.B. Evidence that written notice of loss was presented to carrier/carrier's representative within three days of discharge/delivery.</p>	100 percent compliance when there are losses suffered, if no mitigating circumstances. Determination of mitigation is at the discretion of the Government.
<p>3.C. Observe, and provide documentation and evidence for the disposition of any damaged cargo.</p> <ul style="list-style-type: none"> - Document reconstitution efforts and results 	100 percent compliance for observation, if no mitigating circumstances. Determination of mitigation is at the discretion of the Government.

PERFORMANCE STANDARD	ACCEPTABLE QUALITY LEVEL (AQL)
<ul style="list-style-type: none"> - Obtain health officer's certificate for cargoes suspected to be unfit - - Provide disposal or destruction documentation - The names of those present at discharge/customs inspection/delivery/destruction, including names, titles, and organizational affiliations. 	
<p>3.D. In the event of damaged cargo, take samples and, subject to separate authorization by the Contracting Officer, provide timely analysis of suspected unfit cargo by an independent third party lab, if local health official is not available.</p>	<p>100 percent compliance when local health official is not immediately available, contractor must take representative samples at the time damage is discovered, or commodity is suspected to be unfit.</p> <p>Initiate analysis of samples within one week of authorization:</p> <ul style="list-style-type: none"> - 100 percent compliance when major damage (damage that in the estimation of the surveyor exceeds USD \$20,000) is present - 75 percent compliance when value of the loss is minor
<p>Certifications signed by third parties (vessel personnel, NGO representatives, customs representatives) establishing attendance by the Contractor at each location attended.</p>	<p>100 percent compliance, if no mitigating circumstances. Determination of mitigation is at the discretion of the Government.</p>
<p>5.A. The complete written report shall be submitted within 60 days of completion of discharge/delivery.</p>	<p>100 percent compliance, if no mitigating circumstances. Determination of mitigation is at the discretion of the Government.</p>
<p>5.B. Submission of the preliminary form KC-334 upon completion of discharge/delivery and submission of the final form KC-334 with the survey report.</p>	<p>For preliminary information, 100 percent compliance in cases where losses are noted.</p> <p>For final information, 100 percent compliance. KC-334 shall be submitted with the survey report.</p>

C.1.3 Contract modifications

In the event the Contractor effects any change at the direction of any person other than the CO, or successor CO, the change will not be considered and no adjustment

will be made in the contract or delivery order price to cover any increase in charges incurred as result thereof. The CO is the only person authorized to issue, modify or terminate the contract or Task Orders issued under the contract.

Any additional services or a change to work specified herein which may be performed by the Contractor either of his own volition or at the request of the individuals other than a duly appointed CO, except as may be explicitly authorized in this contract, are not authorized and will not be paid for. Only duly appointed CO of USDA/FSA/KCCO is authorized to change the specifications, terms and conditions, or scheduled delivery dates after order cut off date in this contract or modify Task Orders issued under this contract.

D. Price Rate Sheet

Bidders should complete one rate sheet for each country/region, circling base years and option years as desired.

See reverse side for Privacy Act, Public Burden and Nondiscrimination Statements.

Form Approved - OMB No. 0560-0177

☞ **KC-337**
(6-19-01)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency
Rate Schedule

Country/Region: _____ Base Year / Option Year 1 / 2 / 3 / 4 (Circle, as appropriate)

DISCHARGE SURVEYS				
Metric Tons (MT)				
(Rates are per net MT except for Min. Fee)				
Type of Cargo	Up to 999 MT Min. Fee*	1,000 - 5,000 MT	5,001 - 10,000 MT	10,001 MT and above
Bulk-No bagging				
Bulk-Including Bagging				
Breakbulk				

* Minimum fee applies only to shipments of less than 1,000 MT.

DRAFT SURVEYS
(Cost is separate from your base rates)
Rate for each draft survey:

CUSTOMS LOCATIONS
(Cost shall be expressed per workday)
Rate per workday:

THROUGH BILL OF LADING SURVEYS				
(Rate must include cost to perform survey at both discharge and delivery)				
Metric Tons (MT)				
(Rates are per net MT except for Min. Fee)				
Type of Cargo	Up to 999 MT Min. Fee*	1,000 - 5,000 MT	5,001 - 10,000 MT	10,001 MT and above
Bulk-No bagging				
Bulk-Including Bagging				
Breakbulk				
Number of Containers				
(Rates are per container except for Min. Fee)				
	Min. Fee*	Min. 10 Max. 25	Min. 26 Max. 50	51 and above
Non-refrigerated				
Refrigerated				

* Minimum fee applies only to bulk or breakbulk shipments of less than 1,000 MT or to shipments of less than 10 containers.

Rate schedule must be stated in U.S. currency

I certify that this firm has the expertise necessary to perform the survey services required by Commodity Credit Corporation in this country/region. I further certify that this rate schedule is my bid to perform survey services in this country/region for a period of one year from the date the contract is awarded to this firm and that such rate schedule is all-inclusive and will not change during the period under which the contract is effective.

Signature: _____

Title: _____

Firm Name: _____

Fax Number: _____

E-mail: _____

➤ **KC-337** (REVERSE)

PRIVACY ACT AND PUBLIC BURDEN STATEMENTS

The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is 7 CFR 1400, Subchapter C. The information will be used to evaluate bids to purchase commodities and provide services. Furnishing the requested information is voluntary; however, failure to furnish the requested information will result in nonconsideration. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.

Federal Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM (OMB No. 0560-0177), Stop 7630, Washington, D.C. 20250-7630.

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA=s TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

IV. Solicitation Provisions

A. FAR 52.212-1 Instructions to Offerors—Commercial Items (June 2008)

Note: 52.212-1 is incorporated into this solicitation by reference. Its full text may be accessed electronically at <http://www.arnet.gov/far/>.

A.1 Addenda to FAR 52.212-1

1. Addendum to paragraph (b) *Submission of offers.*

Submission of offers is revised to remove “Offers may be submitted on the [SF 1449](#).” The SF 1449 is not being used for this streamlined solicitation. Offerors should submit their signed and dated offers on letterhead stationery.

In addition to items (1) through (11) required by paragraph (b) of FAR clause 52.212-1, the paragraph is further amended to require the inclusion of the following in offerors’ proposal packages—

- (12) Offerors shall also identify the specific country(ies)/locations for which they are offering.
- (13) A valid e-mail address for contact purposes
- (14) A completed price rate sheet (included as an attachment in Part III of this solicitation)
- (15) A technical proposal addressing management approach, staffing, and past performance
- (16) A statement certifying offeror has the capability to utilize standard digital photography to document any issues which might be raised
- (17) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation.

Proposals **must be** submitted by e-mail to:

george.pryor@kcc.usda.gov

2. Addendum to paragraph (c) *Period for acceptance of offers.*

Paragraph (c) is amended to require the offeror to hold the prices in its offer firm for 60 calendar days from the date specified for receipt of offers.

3. Addendum to paragraph (j) *Data Universal Numbering System (DUNS)*

Foreign firms are exempted from the requirement to obtain and provide a (DUNS) Number

4. Addendum to paragraph (k) *Central Contractor Registration*

Foreign firms are exempted from the requirement to register in the Central Contractor Registration database unless contract payments are made within the United States.

(End of addenda)

5. Additional Provisions

AGAR 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.

(End of provision)

AGAR 452.215-71 Instructions for the Preparation of Technical and Business Proposals (Sep 1999)

(a) General Instructions. Proposals submitted in response to this solicitation shall be furnished in the following format with the numbers of copies as specified below.

(1) The proposal must include a technical proposal and business proposal (rate sheet). Each of the parts shall be separate and complete so that evaluation of one may be accomplished independently from evaluation of the other. The technical proposal must not contain reference to cost; however, resource information (such as data concerning labor hours and categories, materials, subcontracts, etc.) must be contained in the technical proposal so that the contractor's understanding of the statement of work may be evaluated.

(2) Offerors may, at their discretion, submit alternate proposals or proposals which deviate from the requirement; provided, that an offeror also submit a proposal for performance of the work as specified in the statement of work. Any "alternate" proposal may be considered if overall performance would be improved or not compromised, and if it is in the best interest of the Government. Alternate proposals, or deviations from any requirement of this RFP, must be clearly identified.

(3) The Government will evaluate proposals in accordance with the evaluation criteria set forth in B.(a) of this RFP below.

(4) Offerors shall submit their proposal(s) in the following format and the quantities specified:

(a) **By e-mail** the technical proposal

(b) **By e-mail** the rate sheet

(c) If offeror has not completed representations and certifications electronically via the Online Representations and Certifications Application (ORCA) at <http://orca.bpn.gov>, of the completed and signed Offeror Representations and Certifications-Commercial Items (FAR 52.212-3 included in D. below.)

(d) If offeror has completed ORCA electronically, include any updated items in 52.212-3(b).

(b) Technical Proposal Instructions.

The technical proposal will be used to make an evaluation and arrive at a determination as to whether the proposal will meet the requirements of the Government. Therefore, the technical proposal must present sufficient information to reflect a thorough understanding of the requirements and a detailed description of the techniques, procedures and program for achieving the objectives of the specifications/statement of work.

Proposals which merely paraphrase the requirements of the Government's specifications/statement of work, or use such phrases as "will comply" or "standard techniques will be employed" will be considered unacceptable and will not be considered further. As a minimum, the proposal must clearly provide the minimum information required to evaluate each technical evaluation factor listed in B.(a).

(c) Business Proposal Instructions.

(2) Business Proposal.

(a) Provide a completed rate sheet.

(End of Provision)

FAR 52.215-1 Instructions to Offerors-Competitive Acquisition (Jan 2004)

FAR 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 this/these address(es):

<http://www.arnet.gov/far/>

(End of provision)

B. FAR 52.212-2 Evaluation-Commercial Items. (January 1999)

(a) The Government will award contracts resulting from this solicitation to the responsible offerors whose offers conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

1. **Past Performance.** The government will evaluate proposals on the basis of past (within the last three years) or current government, or commercial contracts similar to this government requirement, and information obtained from any available sources. If there is no information, or none is available on past contract performance, the offeror will be rated as neutral.
2. **Management Approach to Survey Requirements.** The Government will evaluate this factor on the basis of how the firm will execute the services required under this solicitation and the performance work statement.

Offeror shall provide an approach that addresses management strategy to be employed in ensuring the timely submission of accurate, comprehensive, and thorough written survey reports. Proposals must describe in detail how the work will be managed, conducted, and communicated/coordinated with commodity recipients (e.g. NGO's/governments), ocean carriers, USDA personnel, and other parties. This description should demonstrate a thorough understanding of survey

requirements and controls needed to ensure successful performance by the contractor.

Offeror shall provide a detailed operational structure for the conduct of the survey work. This structure should include a management/employee organizational chart showing chain of command and communication flow from top to bottom levels.

3. **Staffing.** Offeror should provide detailed information regarding physical presence in the country/location, including offices and other real property to be used in conduct of the survey work. If discharge survey work is likely to be conducted in a country/location other than the country/location for which the contract will be awarded, this same information shall be provided for that location(s).

Offeror shall provide resumes of key personnel including all surveyors and contact parties who will be involved with the surveys in the country/location for which the proposal is submitted. Resumes should include, at a minimum, the type of survey work performed. Again, if discharge work is expected to be conducted in a second country/location, the personnel information described herein must be provided for that location(s).

4. **Prices** submitted on the rate sheet provided with this notice

The Government will award contract(s) resulting from this solicitation to the responsible Offeror(s) whose proposal(s), after consideration of the evaluation criteria, is determined to be the most advantageous to the Government. The Government may reject any or all proposals, if such action is in the Government's best interest, and may waive information and minor irregularities in proposals received. In addition, the Government plans to award without discussions. However; the Government reserves the right to hold discussions, when the Source Selection Authority (SSA) determines it necessary.

The Government is concerned with obtaining superior technical capability rather than making award at the lowest cost or price in awarding this contract. Therefore, the Government considers the relative importance of an Offeror's technical capability and past performance, when combined, to be significantly more important than its price. The importance of cost or price will increase as the difference between the Offerors' technical expertise decreases, and cost or price will always be considered a factor.

Prior to the commencement of any technical evaluation, the CO will review the proposals submitted to determine compliance with the terms and conditions of the solicitation requirements. Failure to comply with these terms may be cause for a proposal to be rejected without any further evaluation. Proposals, to be acceptable, must be prepared in accordance with the instructions outlined in Section IV and must meet the requirements set forth in Section III.

The Government reserves the right to contact any or all the supplied past performance references listed in the proposal or identified from other sources (if that is deemed to be in the best interest of the Government) to confirm the validity of the Offeror's information. The assessment of the Offeror's performance will be used as a means of evaluating the credibility of the Offeror's proposal and the relative capability of the Offeror. A record of marginal or unacceptable past performance may be considered an indication that the ability of the Offeror to perform the contract as proposed may be questionable. An Offeror with an excellent or very good record of past performance will receive a more favorable evaluation than another whose record is only satisfactory. The following approach will be used for past performance information:

- a) In accordance with FAR Part 15.305, if there is no information on past contract performance of an Offeror or past contract performance is not available the Offeror may not be evaluated favorably or unfavorably on past performance, and will be scored as neutral.
- b) In investigating an Offeror's past performance, information in the Offeror's proposal will be considered along with information obtained from other sources, such as past and present customers, organizations, information from USDA or other government agencies having useful information.
- c) Evaluation of past performance will be a subjective assessment based on the consideration of all relevant facts and circumstances. The Government is seeking to determine whether the Offeror has consistently demonstrated a commitment to customer satisfaction and timely delivery of quality goods and services at fair and reasonable prices.
- d) Past performance will be evaluated to determine quality of service, timeliness of performance, customer satisfaction/business relations, and past performance.
- e) At no time during this process or after award, will the names of the individuals providing reference information about an Offeror's past performance be revealed to the Offerors or to any other party.

In evaluating the price portion of the proposal, a price analysis shall be performed to determine the price reasonableness. A finding that prices are unreasonable may remove that proposal from consideration for contract award.

The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of

an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

C. FAR 52.212-3 Offeror Representations and Certifications—Commercial Items (Jul 2009)

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically at <http://orca.bpn.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (c) through (m) of this provision.

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

“Emerging small business” means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Inverted domestic corporation” means a foreign incorporated entity which is treated as an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#).

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the

Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

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

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

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

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

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

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

(6) Have been voluntarily suspended.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

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

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

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

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

“Veteran-owned small business concern” means a small business concern—

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

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

“Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern—

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

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

(b)

(1) *Annual Representations and Certifications.* Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in 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 paragraphs _____.

[Offeror to identify the applicable paragraphs at (c) through (n) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]

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.

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 ORCA.]

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

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

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

(3) *Service-disabled veteran-owned small business concern.* *[Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.]* The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

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

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

Note: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) *Women-owned business concern (other than small business concern).* *[Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents that it is a women-owned business concern.

(7) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: _____

(8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the designated industry groups (DIGs).] The offeror represents as part of its offer that it is, is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of Employees Average Annual Gross Revenues

- | | |
|--------------------------------------|--|
| <input type="checkbox"/> 50 or fewer | <input type="checkbox"/> \$1 million or less |
| <input type="checkbox"/> 51–100 | <input type="checkbox"/> \$1,000,001–\$2 million |
| <input type="checkbox"/> 101–250 | <input type="checkbox"/> \$2,000,001–\$3.5 million |
| <input type="checkbox"/> 251–500 | <input type="checkbox"/> \$3,500,001–\$5 million |
| <input type="checkbox"/> 501–750 | <input type="checkbox"/> \$5,000,001–\$10 million |
| <input type="checkbox"/> 751–1,000 | <input type="checkbox"/> \$10,000,001–\$17 million |
| <input type="checkbox"/> Over 1,000 | <input type="checkbox"/> Over \$17 million |

(9) [Complete only if the solicitation contains the clause at FAR [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]

(i) General. The offeror represents that either—

(A) It is, is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It has, has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint

venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: _____.]

(10) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

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

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It has, has not filed all required compliance reports.

(2) *Affirmative Action Compliance.* The offeror represents that—

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

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

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 U.S.C. 1352).

(Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Act Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) [52.225-1](#), Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) 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 offeror shall list as 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.” The

terms “commercially available off-the-shelf (COTS) item” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(2) Foreign End Products:

Line Item No. Country of Origin

_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#).

(g)(1) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate*. (Applies only if the clause at FAR [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

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

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, or Peruvian End Products) or Israeli End Products:

Line Item No. Country of Origin

_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) 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]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#).

(2) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I.* If Alternate I to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

Line Item No.

[List as necessary]

(3) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II.* If Alternate II to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian or Israeli End Products:

Line Item No. Country of Origin

[List as necessary]

(4) *Trade Agreements Certificate.* (Applies only if the clause at FAR [52.225-5](#), Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line Item No. Country of Origin

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#). 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 such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Responsibility Matters (Executive Order 12689)*. (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

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

(2) 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 Federal, state or local government 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;

(3) Are, are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4) 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.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *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.

(B) *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.

(ii) *Examples*.

(A) 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.

(B) 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.

(C) 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.

(D) 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).

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126)*. [*The Contracting Officer must list in paragraph (i)(1) any end products being acquired*

under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at [22.1503\(b\)](#).]

(1) Listed end products.

Listed End Product Listed Countries of Origin

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

[] (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[] (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract Act.* (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

[] (1) Maintenance, calibration, or repair of certain equipment as described in FAR [22.1003-4\(c\)\(1\)](#). The offeror does does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR [22.1003-4\(c\)\(2\)\(ii\)](#)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

[] (2) Certain services as described in FAR [22.1003-4\(d\)\(1\)](#). The offeror does does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR [22.1003-4\(d\)\(2\)\(iii\)](#));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) *Taxpayer Identification Number (TIN)* ([26 U.S.C. 6109](#), [31 U.S.C. 7701](#)). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of [31 U.S.C. 7701\(c\)](#) and [3325\(d\)](#), reporting requirements of [26 U.S.C. 6041](#), [6041A](#), and [6050M](#), and implementing regulations issued by the Internal Revenue Service (IRS).

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

(3) *Taxpayer Identification Number (TIN)*.

o TIN: _____.

o TIN has been applied for.

o TIN is not required because:

o Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

o Offeror is an agency or instrumentality of a foreign government;

o Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization*.

o Sole proprietorship;

o Partnership;

o Corporate entity (not tax-exempt);

o Corporate entity (tax-exempt);

o Government entity (Federal, State, or local);

o Foreign government;

o International organization per 26 CFR 1.6049-4;

o Other _____.

(5) *Common parent*.

- o Offeror is not owned or controlled by a common parent;
- o Name and TIN of common parent:

Name _____.

TIN _____.

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

(n) Prohibition on Contracting with Inverted Domestic Corporations.

(1) *Relation to Internal Revenue Code.* A foreign entity that is treated as an inverted domestic corporation for purposes of the Internal Revenue Code at [26 U.S.C. 7874](#) (or would be except that the inversion transactions were completed on or before March 4, 2003), is also an inverted domestic corporation for purposes of 6 U.S.C. 395 and for this solicitation provision (see FAR [9.108](#)).

(2) *Representation.* By submission of its offer, the offeror represents that it is not an inverted domestic corporation and is not a subsidiary of one.

(End of provision)