



AMS Master Solicitation for Commodity Procurements – International Programs (MSCP-I)

for International Food Assistance Program Purchases

Effective: August 13, 2020

USDA, Agricultural Marketing Service
Commodity Procurement Program
1400 Independence Ave., SW, Room 3522-S, STOP 0239
Washington, DC 20250-0239

An Equal Opportunity Provider and Employer

**AMS Master Solicitation for Commodity Procurements – International Programs (MSCP-I)
for International Food Assistance Program Purchases**

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Master Solicitation for Commodity Procurements for International Food Assistance Programs

I. GENERAL INFORMATION

This solicitation, called the Master Solicitation for Commodity Procurements – International Programs (MSCP-I or “Master Solicitation”), is used by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Commodity Procurement Program (CPP) for the solicitation of bids and award of contracts for various commodities used in U.S. Government international food assistance programs, such as Food for Peace, Food for Progress, and the McGovern-Dole Food for Education programs.

CPP will periodically issue invitations for bids (IFB), available for viewing on the Web Based Supply Chain Management (WBSCM) public procurement page, and through the Federal Business Opportunities (FBO) website. Bidding and contract related actions, such as viewing WBSCM Purchase Orders (i.e., contracts) and shipping instructions, providing Advance Shipping Notices (ASN), and receipting of goods are performed in WBSCM.

The Master Solicitation will be updated as necessary to incorporate changes in the Federal Acquisition Regulation (FAR), Agricultural Acquisition Regulations (AGAR), and AMS policies and procedures. Bidders should not assume that a copy of the MSCP-I, once downloaded for a particular IFB will be applicable for subsequent IFBs. The effective date at the top of the Master Solicitation document will govern which version of MSCP-I is applicable to a particular IFB. Changes to the MSCP-I will be bolded in each version. Prior versions of the MSCP-I will be archived and available on the AMS website.

Awards will be made following the principles in the FAR and AGAR. The IFB will specify the commodity; delivery periods; destinations; quantities; the closing time for receipt of bids; acceptance date, and any solicitation provisions and contract clauses applicable to the proposed procurement which are in addition to, or different from, those contained in the Master Solicitation. The full texts of the applicable FAR provisions and clauses incorporated into the contract can be found at <https://www.acquisition.gov/far/index.html>.

Commodities purchased by AMS must be a product of the United States (see clause 4A52.225-1, U.S. Origin Product). Specifications and program requirements are further defined in the appropriate commodity specification and/or supplement and are incorporated herein.

Offerors are advised to carefully read this Master Solicitation, the applicable IFB, and the applicable commodity requirements document to understand the invitation, evaluation, and award process for CPP commodity acquisitions for international food assistance programs. Failure to do so will be at the offeror’s risk. These documents are incorporated into the contract. Offerors are cautioned that statements made by Government personnel other than the Contracting Officer are not binding on the Government unless confirmed in writing by the Contracting Officer.

To be eligible to submit a bid, a company must be approved by the Contracting Officer as meeting vendor qualification requirements. For information regarding how to become a qualified bidder, visit [the vendor qualification webpage](#), or contact the Contracting Officer.

This version of the Master Solicitation incorporates FAR provisions and clauses in effect through FAC 2020-08.

II. CONTRACT CLAUSES

52.202-1 Definitions (Nov 2013)

4A52.202-1 Additional Definitions Applicable to this Solicitation (Jul 2019)

- (a) “Agricultural commodity” means commodities and the products of agricultural commodities produced in the United States. A product shall not be considered to be produced in the United States if it contains any ingredient that is not produced in the United States, if that ingredient is:
 - 1. Produced in the United States; and
 - 2. Commercially available in the United States at fair and reasonable prices from domestic sources.(Authority 7 U.S.C. 1732(2), 1736o-1(a), and AGAR 470.103)
- (b) “Commingled product” means grains, oilseeds, rice, pulses, other similar commodities and the products of such commodities, when such commodity or product is normally stored on a commingled basis in such a manner that the commodity or product produced in the United States cannot be readily distinguished from a commodity or product not produced in the United States.
- (c) “Commodity Credit Corporation (CCC)” means a wholly-owned government corporation within the U.S. Department of Agriculture(USDA).
- (d) “Free alongside ship (f.a.s.) (f.a.s. *named port of shipment*)” means a term of sale which means the seller fulfills its obligation to deliver when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment. The supplier is responsible for all costs including but not limited to tollage, wharfage, and handling. The buyer bears all costs and risks of loss of or damage to the goods from that point.
- (e) “FGIS” means Federal Grain Inspection Service of the USDA which provides inspection, weighing, and related services on grains, pulses, oilseeds, and processed and graded commodities.
- (f) “F.o.b. vessel” means: for dry bulk cargoes, delivered free of expense to the Government loaded, unstowed and untrimmed, on board the designated conveyance at the USDA-approved port facility specified in the contract; and for liquid bulk cargoes, delivered free of expense to the Government on board the ocean vessel provided by USDA at the named port of shipment specified in the contract.
- (g) “Grain Acquisition Report and Invoice for Related Charges,” Form KC-228 means a form that is issued by a warehouse operator to CCC in lieu of or in addition to a warehouse receipt.
- (h) “Intermodal plant” means delivered free of expense to the Government loaded on board the carrier-supplied conveyance at the originpoint.
- (i) “Intermodal bridge” means delivered free of expense to the Government delivered in transportation conveyance obtained by the vendor to locations where steamship lines have

established and published intermodal rates from a U.S. point to a U.S. port and a foreign destination.

- (j) “Instore” means within a USDA-approved warehouse.
- (k) “Lowest-landed cost,” means the lowest combined cost of commodity and ocean freight to deliver a commodity to an overseas destination while adhering to cargo preference statutes and regulations.
- (l) “Packaging and containers” includes any substance intended for use as a component of materials used in manufacturing, packing, transporting or holding food if such use is not intended to have a technical effect in such food.
- (m) “Plant” is defined as the prime or sub-contractor’s facility where an agricultural commodity, or commodity-related item, is manufactured or processed from raw materials into a finished product, assembled from components, or packaged. An offeror’s plant location, cited in an offer, must contain at least one of the industrial or manufacturing processes listed above. A local site which accommodates finished product while awaiting analytical test results, staging for shipment consolidation, or loading into shipping containers/trucks/railcars is considered a supplementary extension of the prime or sub-contractor’s plant facility.
- (n) “WBSCM Purchase Order” or “WBSCM PO” means a contract that is accessible in the WBSCM System. “Contract” is as defined by FAR, i.e., a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. See FAR 2.101 for the full definition.
- (o) “World Trade Organization Government Procurement Agreement (WTO GPA) country” means any of the following countries: Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom.

52.203-3 Gratuities (Apr 1984)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.203-5 Covenant against Contingent Fees (May 2014)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.203-6 Restrictions on Subcontractor Sales to the Government (Sep 2006)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.203-7 Anti-Kickback Procedures (May 2014)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (May 2014)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015)

[Applicable for contracts with values expected to exceed \$5.5 million, and with a Performance period of 120 days or more.]

52.203-14 Display of Hotline Poster(s) (Oct 2015)

[Applicable for non-commercial item contracts performed within the United States if the contract value is expected to exceed \$5.5 million.]

(b) Definition.

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

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

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

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

(2) Any DHS fraud hotline poster subsequently identified by the Contracting Officer. Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

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

Poster (s)

USDA Hotline, “Report Violations of Laws and Regulations Relating to USDA Programs”

Obtain from

USDA Office of Inspector General www.usda.gov/oig/hotline.htm

Toll Free Number: (800) 424-9121

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

(e) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph

(d), in all subcontracts that exceed \$5,000,000, except when the subcontract—

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

(2) Is performed entirely outside the United States.

(End of clause)

52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014)

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

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018)

[Applicable to all solicitations and contracts of \$30,000 or more.]

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

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

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

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

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

- (1) Salary and bonus.
 - (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.
 - (3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - (5) Above-market earnings on deferred compensation which is not tax-qualified.
 - (6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- (b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.
- (c) Nothing in this clause required the disclosure of classified information.
- (d) (1) Executive compensation of the prime contractor. As a part of its annual registration requirement in the System for Award Management (SAM) (FAR provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—
- (i) In the Contractor’s preceding fiscal year, the Contractor received—

- (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
 - (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- (2) First-tier subcontract information. Unless otherwise directed by the contracting officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of \$30,000 or more, the Contractor shall report the following information at <http://www.fsrs.gov> for that first tier subcontract. (The Contractor shall follow the instruction at <http://www.fsrs.gov> to report the data.)
- (i) Unique entity identifier for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
 - (ii) Name of the subcontractor.
 - (iii) Amount of the subcontract award.
 - (iv) Date of the subcontract award.
 - (v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
 - (vi) Subcontract number (the subcontract number assigned by the Contractor).
 - (vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
 - (viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
 - (ix) The prime contract number, and order number if applicable.
 - (x) Awarding agency name and code.
 - (xi) Funding agency name and code.
 - (xii) Government contracting office code.
 - (xiii) Treasury account symbol (TAS) as reported in FPDS.
 - (xiv) The applicable North American Industry Classification System code (NAICS).
- (3) Executive compensation of the first-tier subcontractor. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$30,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <https://www.fsrs.gov>, if—
- (i) In the subcontractor's preceding fiscal year, the subcontractor received—
 - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

- (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements and other forms of Federal financial assistance; and
- (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- (e) The Contractor shall not split or break down first-tier subcontract awards to a value less than \$30,000 to avoid the reporting requirements in paragraph (d) of this clause.
- (f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.
- (g) (1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.
 (2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor
 The FSRs database at <http://www.fsr.gov> will be prepopulated with some information from SAM and the FPDS database. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM information is incorrect, the contractor is responsible for correcting this information.

(End of clause)

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020)

(a) Definitions. As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an

entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses

any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

52.209-1 Qualification Requirements (Feb 1995)

(a) *Definition.* “Qualification requirement,” as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

- (b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

New Vendor/Small Business Coordinator
USDA, AMS Commodity Procurement Program
NewVendor@ams.usda.gov
Linda Steigerwald, 816-926-6168

- (c) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.
- (d) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government's interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.
- (e) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of Clause)

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015)

[Applicable for contracts exceeding \$35,000.]

52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018)

- (a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management via <https://www.sam.gov>.
- (b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIS consist of two segments—

- (1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—
 - (i) Government personnel and authorized users performing business on behalf of the Government; or
 - (ii) The Contractor, when viewing data on itself; and
- (2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for--
 - (i) Past performance reviews required by subpart 42.15;
 - (ii) Information that was entered prior to April 15, 2011; or
 - (iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.
- (c) The Contractor will receive notification when the Government posts new information to the Contractor's record.
 - (1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.
 - (2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.
 - (3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.
- (d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

4A52.211-1 Delivery Instructions

The Government shall issue to the contractor electronic purchase orders (contracts) in WBSCM. Notification of the issuance of documents in WBSCM will be sent via email. The contractor shall be responsible for ensuring that it is capable of receiving email communications during the course of the contract. The contractor shall ensure that it has an accurate email address on file with the Government. The Government will not be responsible for any failure of contractor receipt of electronic information attributable to inoperable receiver equipment and/or software. The Government reserves the right, at its option, to issue Purchase Order by other means such as, but not limited to, facsimile transmission or regular mail.

(End of clause)

4A52.211-2 Compensation for Delays in Delivery/Time is of the Essence

- (a) If a Contractor determines that it will not be able to deliver the commodity by the Not-Later-Than (NLT) delivery date, the Contractor shall notify the Contracting Officer immediately. If the reason for not meeting the NLT delivery date is beyond the control or negligence of the

Contractor, the Contractor is required to submit a waiver request within 2 working days after the scheduled NLT delivery date. ([Sample waiver requests are available online.](#)) Failure to submit a waiver request within the time specified will result in liquidated damages being assessed. Waiver requests submitted after the time specified will not be accepted. See clause 52.211-11, of the Master Solicitation.

- (b) If a Contractor delivered a product and the product is rejected, the Contractor shall deliver an acceptable replacement product prior to the end of the NLT delivery date and liquidated damages will not be assessed. However, if the replacement product will be delivered beyond the NLT delivery date, liquidated damages will be assessed.
- (c) When deliveries are made by contract carrier or vendor's own vehicle, the date shown on the signed commercial bill of lading will be considered the date of delivery.

(End of clause)

4A52.211-3 Regulatory Requirements for Commodities and Packaging

- (a) The commodity shall conform to the applicable provisions of the "Federal Food, Drug, and Cosmetic Act" (21 U.S.C. 301 et. seq.), as amended, and the relevant regulations, **including applicable Food Safety Modernization Act regulations (FSMA), and sections in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act)**. The contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations related to its performance under this contract.
- (b) All containers and packaging materials shall be constructed to meet the requirements of the Food and Drug Administration for safe contact with the packaged product. In addition, all containers and packaging materials shall be constructed to comply with the sum concentration levels of lead, cadmium, mercury, and hexavalent chromium addressed by the Coalition of Northeast Governors (CONEG) model legislation. The sum of the concentration levels of lead, cadmium, mercury, and/or hexavalent chromium present in any package or packaging component shall not exceed 100 parts per million. Concentration levels shall be determined using American Standard of Testing Materials test methods, as revised, or U.S. Environmental Protection Agency test methods for evaluating solid waste, S-W 846, as revised.

(End of clause)

52.211-5 Material Requirements (Aug 2000)

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

NOTE: Liquidated damages are based upon delivery periods for f.o.b.

destination contracts and f.a.s. vessel contracts for bags only, but based on shipping periods for all others.

- (a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of \$ (see table below) per calendar day of delay, not to exceed 45 days of delay.

Commodity Liquidated Damages	USDA Commodity Requirement	Rate	Per Net Weight
All Purpose Wheat Flour/Bread Flour Bagged Grain Bulgur Wheat/Soy - Fortified Bulgur Canned Salmon Corn Oil Cornmeal Corn-Soy Blend Plus Dehydrated Potato Products Dried Dairy Ingredients Dry Edible Beans Fortified Poultry-Based Spread High Energy Biscuits Milled Rice/Fortified Milled Rice (bagged) Peas & Lentils Ready-To-Use Supplementary Food Ready-To-Use Therapeutic Food Soy-Fortified Cornmeal Sunflower Seed Oil Super Cereal Plus Value Added Soy Products Vegetable Oil Wheat Soy Blend	(WFBF) (KCBG) (BWSF) (CPS) (CO) (CM) (CSBP) (DPP) (DDI) (DEB) (FPBS) (HEB) (MR) (PL) (RUSF) (RUTF) (SFCM) (SFSO) (SCP) (VASP) (VO) (WSB)	\$ 0.11	Cwt/day
Nonfortified Nonfat Dry Milk-Export	(DME)	(.45)	Cwt/day
Bags	(KCP BAGS)	\$25.00	1,000 bags/day

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

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

4A52.211-11 Carrying Charges

- (a) For f.o.b. vessel contracts only (excludes bulk oils and tallow), if the Government fails to take delivery by the end of the delivery period for reasons beyond the control of the contractor, the Government will pay carrying charges, on gross metric tons (net metric tons for wheat and sorghum), at the rate of 18 cents per metric ton per day beginning on the day following the end of the delivery period and continuing through the date the vessel presents the notice of readiness. For the purpose of carrying charges, a vessel must have passed all required inspections and be ready to receive grain in the compartments required for loading and a valid Notice of Readiness (NOR) must be presented during normal business hours of 0900 to 1600 local time, Monday through Friday and on Saturday between 0900 to 1200 noon (provided it is not a holiday). If the NOR is filed after business hours, the NOR will be considered presented on the next business day.
- (b) For f.o.b. vessel contracts for bulk oil, and tallow, if the Government fails to take delivery by the end of the delivery period for reasons beyond the control of the contractor, the Government will pay to the contractor a premium based on the actual (noncumulative) number of days by which the delivery period is exceeded through the date the vessel presents the notice of readiness as follows:
- 1) If exceeded by 1, 2, 3, or 4 days, $\frac{1}{2}$ of 1 percent of the f.o.b. price;
 - 2) If exceeded by 5 or 6 days, 1 percent of the f.o.b. price;
 - 3) If exceeded by 7 or 8 days, $1\frac{1}{2}$ percent of the f.o.b. price;
 - 4) If exceeded by more than 8 days, an additional premium of $\frac{1}{4}$ of 1 percent of the f.o.b. price for each day beyond 8 days.
- (c) If the f.o.b. vessel contract contains multiple prices, the premium shall be calculated on the weighted average of the contract prices.

52.211-16 Variation in Quantity (Apr 1984)

- (a) A variation in quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping or packing, or allowances in manufacturing process, and then only to the extent, if any specified in paragraph (b) of this clause.
- (b) The permissible variation shall be limited to:
- Zero (0) percent increase
 - Zero (0) percent decrease.

452.211-74 Period of Performance (Feb 1988)

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

4A52.214-14 Place of Performance (Aug 2019)

- (a) For f.o.b. vessel bulk grain shipments place of performance shall:
- (i) Be a federally or state licensed warehouse and be on CCC's List of Authorized Warehouses or have a put through agreement or other means to assure timely delivery through an export elevator on CCC's List of Approved Warehouses, with the ability to load ocean-going vessels and barges from a spout that is physically attached to the storage location.
 - (ii) Be a federally or state licensed warehouse and be on CCC's List of Authorized Warehouses or have a put through agreement or other means to assure timely delivery through a dockside facility or a floating Mid- stream facility for exporting milled rice or soybean meal.
 - (iii) Have the ability to issue or cause to be issued export weight and grade certificates covering the exportation of the product at the location of the elevator. The certificates shall be acceptable to the FGIS.
 - (iv) Have approved loadout rates for tankers and tween-deckers.
 - (v) If loading is out of the Great Lakes, trans-shipment will be allowed providing the origin of the loading is out of the Great Lakes. The original Laker vessel shall be loaded at the federally or state licensed warehouse and trans-shipped to a larger ocean-going vessel most commonly in the St. Lawrence Seaway.
- (b) For Instore bids, be on CCC's List of Approved Warehouse or be recognized members of the grain industry and be otherwise able to furnish negotiable warehouse receipts or certified KC-228's issued from the approved warehouse named in the bid.

(End of clause)

52.214-26 Audit and Records—Sealed Bidding (Oct 2010)

[Applicable for contracts exceeding \$750,000.]

52.214-27 Price Reduction for Defective Cost or Pricing Data-Modifications-Sealed Bidding (Aug 2011)

[Applicable for contracts exceeding \$750,000.]

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Oct 2010)

[Applicable for contracts exceeding \$750,000.]

4A52.214-29 Order of Precedence

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

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

4A52.219-1 The 8(a) Program

For the purposes of contracts made under the 8(a) Program, FAR 19.8, reference to “Contractor,” in all USDA contract or purchase order documents, means the 8(a) firm. In accordance with the Partnership Agreement as authorized under FAR 19.800(e), the Small Business Administration (SBA) has delegated responsibility to USDA for the administration of contracts or purchase orders awarded to 8(a) firms with complete authority to take any action on behalf of the Government under the terms and conditions of the contract. All 8(a) contractors must be on the Qualified Vendors List.

(End of clause)

4A52.219-2 The HUBZone Program

- (a) The Government will award contracts to eligible HUBZone small business concerns in accordance with FAR Subpart 19.13, except for price evaluation preference mandated by the provisions of 15 U.S.C. 657a and 15 U.S.C. 632(p)(5)(A)(i)(III)(cc). The HUBZone price evaluation preference shall be applied as follows:
- (b) For agricultural commodities procured for international food aid programs, the price evaluation preference shall be 5% on the first portion of a contract to be awarded that is not greater than 20% of the total volume of each commodity being procured in a single invitation.
- (c) In any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business concern is not more than 5 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.
- (d) In accordance with the provision of 13 CFR 125.6(d), in the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, none of the commodity being procured will be obtained by the prime contractor through a subcontract for the purchase of the commodity in substantially the final form in which it is to be supplied to the Government.

(End of clause)

52.219-3 Notice of HUBZone Set-Aside or Sole Source Award (Nov 2011)

- (a) *Definition.* See 13 CFR 125.6(e) for definitions of terms used in paragraph (c).
- (b) *Applicability.* This clause applies only to--
 - (1) Contracts that have been set aside or reserved for, or awarded on a sole source basis to, HUBZone small business concerns;
 - (2) Part or parts of a multiple-award contract that have been set aside for HUBZone small business concerns; and
 - (3) Orders set-aside for HUBZone small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).

- (c) General.
 - (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns will not be considered.
 - (2) Any award resulting from this solicitation will be made to a HUBZone small business concern.
- (d) *Agreement*. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—
 - (1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;
 - (2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;
 - (3) General construction.
 - (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;
 - (ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's employees and employees of HUBZone small business concern subcontractors; and
 - (iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or
 - (4) Construction by special trade contractors.
 - (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;
 - (ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's employees and employees of HUBZone small business concern subcontractors;
 - (iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.
- (e) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the HUBZone small business participants.
- (f) (1) When the total value of the contract exceed \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.
 - (2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.
 - (3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

- (g) Notice. The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

52.219-6 Notice of Total Small Business Set-Aside (Nov 2011)

[Applicable when the IFB stipulates the procurement is a partial small business set-aside.]

52.219-7 Notice of Partial Small Business Set-Aside (Jun 2003)

[Applicable when the IFB stipulates the procurement is a partial small business set-aside.]

52.219-8 Utilization of Small Business Concerns (Oct 2018)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.219-9 Small Business Subcontracting Plan (Aug 2018) Alternate 1

[Applicable for contracts exceeding \$700,000.]

52.219-14 Limitations on Subcontracting (Jan 2017)

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) *Applicability.* This clause applies only to--
 - (1) Contracts that have been set aside or reserved for small business concerns or 8(a) participants;
 - (2) Part or parts of a multiple-award contract that have been set aside for small business concerns or 8(a) participants; and
 - (3) Orders set aside for small business or 8(a) participants under multiple-award contracts as described in [8.405-5](#) and [16.505](#)(b)(2)(i)(F).
- (c) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for --
 - (1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
 - (2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
 - (3) *General construction.* The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
 - (4) *Construction by special trade contractors.* The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of Clause)

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

52.219-27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011)

(a) *Definition.* “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).

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

(1) Contracts that have been set aside or reserved for service-disabled veteran-owned small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for service-disabled veteran-owned small business concerns; and

(3) Orders set aside for service-disabled veteran-owned small business concerns under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).

(c) *General.*

(1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a service-disabled veteran-owned small business concern.

(d) *Agreement.* A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for--

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other service-disabled veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other service-disabled veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other service-disabled veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other service-disabled veteran-owned small business concerns.

(e) A joint venture may be considered a service-disabled veteran owned small business concern if--

- (1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement;
- (2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement; and
- (3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation.
- (4) The joint venture meets the requirements of 13 CFR 125.15(b)
- (f) Any service-disabled veteran-owned small business concern (nonmanufacturer) must meet the requirements in 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of Clause)

52.219-30 – Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program. (Dec 2015)

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

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

- (b) *Applicability.* This clause applies only to--
 - (1) Contracts that have been set aside or reserved for, or awarded on a sole source basis to, WOSB concerns eligible under the WOSB Program;
 - (2) Part or parts of a multiple-award contract that have been set aside for WOSB concerns eligible under the WOSB Program; and
 - (3) Orders set aside for WOSB concerns eligible under the WOSB Program, under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).
- (c) *General.*
 - (1) Offers are solicited only from WOSB concerns eligible under the WOSB Program. Offers received from concerns that are not WOSB concerns eligible under the WOSB program shall not be considered.
 - (2) Any award resulting from this solicitation will be made to a WOSB concern eligible under the WOSB Program.
 - (3) The Contracting Officer will ensure that the apparent successful offeror has provided the required documents to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

- (d) *Agreement.* A WOSB concern eligible under the WOSB Program agrees that in the performance of the contract for--
- (1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;
 - (2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);
 - (3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and
 - (4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including cost of materials).
- (e) *Joint Venture.* A joint venture may be considered a WOSB concern eligible under the WOSB Program if--
- (1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);
 - (2) The WOSB participant of the joint venture is designated in the System for Award Management as a WOSB concern eligible under the WOSB Program;
 - (3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions--
 - (i) Setting forth the purpose of the joint venture;
 - (ii) Designating a WOSB concern eligible under the WOSB Program as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;
 - (iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the WOSB;
 - (iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the WOSB contract; and
 - (v) Requiring the final original records be retained by the managing venturer upon completion of the WOSB contract performed by the joint venture.
 - (4) The joint venture must perform the applicable percentage of work required in accordance with paragraph (d) above; and
 - (5) The procuring activity executes the contract in the name of the WOSB concern eligible under the WOSB Program or joint venture.
- (f) *Nonmanufacturer.* A WOSB concern eligible under the WOSB Program that is a non-manufacturer, as defined in 13 CFR 121.406(b) or FAR 19.102(f), may submit an offer on a WOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.
- (End of clause)

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

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

52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (May 2018)

[Applicable for contracts exceeding \$150,000.]

52.222-21 Prohibition of Segregated Facilities (April 2015)

52.222-26 Equal Opportunity (Sep 2016)

52.222-35 Equal Opportunity for Veterans (Oct 2015)

- (a) *Definitions.* As used in this clause--
“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR 22.1301.
- (b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.
- (c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate of identify properly the parties and their undertakings.
- (d) Notwithstanding the provisions of this section, the Contractor will not be obligated to develop the written affirmative action program required under the regulations implementing the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA).

(End of Clause)

52.222-36 – Equal Opportunity for Workers With Disabilities. (Jul 2014)

- (a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.
- (b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.
- (c) Notwithstanding the provisions of this section, the Contractor will not be obligated to develop the written affirmative action program required under the regulations implementing section 503 of the Rehabilitation Act of 1973, as amended.

(End of Clause)

52.222-37 Employment Reports on Veterans (Feb 2016)

52.222-40 Notification of Employee Rights under the National Labor Relations Act. (Dec 2010)

[Applicable for contracts over the simplified acquisition threshold and for indefinite-quantity contracts where the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold.]

52.222-54 Employment Eligibility Verification (Oct 2015)

52.223-6 Drug-Free Workplace (May 2001)

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

4A52.225-1 U.S. Origin Product (Jan 2018)

- (a) The products of agricultural commodities acquired under this contract must be a product of the United States, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States (See AGAR 470.103). Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise: (1) produced in the United States; and (2) commercially available in the United States at fair and reasonable prices from domestic sources. See 4A52.225-2 U.S. Origin Product – Ingredient Waivers below.
- (b) If the Contractor processes or handles products originating from sources other than the United States, the Contractor must have an acceptable identification and segregation plan for those products to ensure they are not used in commodities purchased under this Master Solicitation—except for commingled products (see paragraph (c)). This plan must be made available to an AMS representative and the Contracting Officer or agent thereof upon request. The Contractor must ensure that the Contractor and any subcontractor(s) maintain records such as invoices, or production and inventory records evidencing product origin, and make such records available for review by the Government in accordance with FAR 52.214-26.
- (c) For commodities that the Department has determined to be generally commingled, a commingled product shall be considered to be a product of the United States if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to the offeror, or obtains during the contract performance period specified in the solicitation, or a combination thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the United States. However, if the commodity can be readily stored on an identity preserved basis with respect to its country of origin, the Government may require that the commodity acquired under this contract be of 100 percent U.S. origin.
- (d) The Contractor agrees to include this domestic origin certification clause in all subcontracts for products used in fulfilling contracts awarded under this Master Solicitation. The burden of proof of compliance is on the Contractor.
- (e) FAR clause 52.225-5, Trade Agreements incorporated by reference in FAR clause 52.212-5 applies only to packaging and container components. Agricultural commodities and their products are exempt from 52.225-5.

- (f) The Government has determined that the following commodities shall be 100 percent U.S. origin and provided on an identity preserved basis:
- Dry beans, peas and lentils.

(End of clause)

4A52.225-2 U.S. Origin of Agricultural Commodities - Waiver for Certain Ingredients

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

- (a) Waived ingredients may be subject to the standard definition of the Buy American Act, which uses as two-part test to define a domestic end product:

- (1) The article must be manufactured in the United States; and
- (2) The cost of domestic components must exceed 50 percent of the cost of all the components.

- (i) The following ingredients are subject to the standard definition of the Buy American Act:
[Reserved]

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

Waived Ingredients	
Nutrient	Fortificant Form
*no nutrient listed	Butylated hydroxy anisole
*no nutrient listed	Butylated hydroxy toluene
Biotin	Biotin 1%
Iodine	Potassium Iodide
Iron	Iron-Sodium EDTA
Pantothenic acid	Calcium D-Pantothenate
Selenium	Sodium Selenite (1.5%)
Vitamin A	Retinol Palmitate
Vitamin B1	Thiamine mononitrate
Vitamin B12	Vitamin B12 0.1% or 1% Spray Dried
Vitamin B2	Vitamin B2 fine powder
Vitamin B2	Riboflavin
Vitamin B3	(Niacin) Nicotinic Acid
Vitamin B6	Pyridoxine hydrochloride
Vitamin B9	Folic Acid
Vitamin C	Ascorbic acid
Vitamin K1	Dry Vitamin K1 5% Water Dispersible/Phylloquinon 5%

52.225-3 Buy American Act-Free Trade Agreements-Israeli Trade Act (May 2014)

[Applicable for contracts valued at \$25,000 or more but less than \$180,000 and only to the packaging and container components utilized by commodity vendors selling agricultural products to CPP; not applicable to contracts for empty 50 kg polypropylene bags.]

52.225-5 Trade Agreements (Aug 2018)

[Applicable for contracts valued at \$180,000 or more and only to the packaging and container components utilized by commodity vendors selling agricultural products to CPP; not applicable for empty 50 kg polypropylene bags.]

52.225-13 Restrictions on Certain Foreign Purchases (Jun 2008)

[Applicable to contracts for empty 50 kg polypropylene bags and only the packaging and container component.]

52.226-6 Promoting Excess Food Donation to Nonprofit Organizations (May 2014)

52.228-2 Additional Bond Security (Oct 1997)

[Applicable for contracts that require a performance bond.]

52.228-11 Pledge of Assets (Aug 2018)

[Applicable for contracts that require a performance bond.]

52.228-14 Irrevocable Letter of Credit (Nov 2014)

[Applicable for contracts that require a performance bond.]

52.229-3 Federal, State, and Local Taxes (Feb 2013)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.232-1 Payments (Apr 1984)

4A52.232-1 Contractor Expenses

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

(End of clause)

4A52.232-3 Electronic Invoicing

Electronic invoicing is authorized and required for this contract.

- (a) *ASN as invoice.* Contractor's advance shipment notice (ASN), entered in WBSCM in accordance with 4A52.211-2, will serve as the contractor's invoice, i.e., request for payment. Separate entry of an invoice using WBSCM's Supplier Self Service is no longer required.
- (b) *Authorization to pay.* The Government will not review an invoice for payment until all required supporting documentation has been received. In addition to the items in paragraph (2) above, all invoice payments must be supported by a receiving report (proof of delivery). A recipient-entered WBSCM goods receipt will serve as the receiving report. The recipient (receiving official) should enter the goods receipt into WBSCM no later than the 2nd working day after delivery.
- (c) *Payment due dates.* The due date for making an invoice payment is as follows—

Upon receipt of a proper invoice for:	Payment must be made as close as possible to but not later than:
<i>Perishable agricultural commodities.</i> As defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C 499a(4)). (This includes frozen fruit and vegetable products).	10 th day after receipt of a proper invoice, unless another day is specified in the contract.
Dairy products. As defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products fall within this classification. Nothing in the Act limits this classification to refrigerated products. If questions arise regarding the proper classification of a specific product, the contracting officer must follow prevailing industry practices in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the contractor making the representation.	10th day after a proper invoice has been received
<i>All other commodities</i>	30 th day after receipt of a proper invoice.

- (d) *Supporting documents.* When applicable, contractor shall upload additional supporting documents when submitting their shipment receipt or ASN in WBSCM as follows—
- (1) Goods Receipt, (including attachments, as applicable; see paragraphs (a) through (g) regarding other proof of delivery documents for various delivery bases);
 - (2) Required inspection certificates (see paragraphs (a) through (g) for the type of inspection evidence required); and
 - (3) Other information required for the applicable delivery basis (outlined in paragraphs (a) through (f) below):
- (a) For f.a.s. vessel with acceptance occurring at origin (e.g., check loaded commodities), the contractor shall submit the following proof of delivery and/or inspection documents:
 - (i) Commercial Bill of Lading; and
 - (ii) Inspection document such as:

- (1) Government-issued inspection certificate; or
 - (2) FGIS Official (original) inspection certificates “with handwritten blue ink signature and lot number”; or
 - (3) Certificate of Analysis (COA), original COA including company letterhead with supplier/lab full address, purchase order number, lot number, production date, BUBD, test results with reference to specification min/max, blue ink handwritten signature, company logo in color and company seal/stamp. If product delivered falls within the quality discount table as outlined in the commodity specifications, those factors must be identified by an asterisk on the copies of the COA; and
 - (iii) Statement from the contractor certifying fumigation of product, if required; and
 - (iv) Copy of check loading certificate as issued by USDA.
- (b) For f.a.s. vessel, intermodal plant, intermodal bridge, shipments with acceptance occurring at final contracted destination (e.g., non-check-loaded commodities): The contractor shall submit the following proof of delivery and/or inspection documents:
- (i) Commercial Bill of Lading; and
 - (ii) Inspection document such as:
 - (1) Government-issued inspection certificate; or
 - (2) FGIS Official (original) inspection certificates “with handwritten blue ink signature and lot number”; or
 - (3) Certificate of Analysis (COA), original COA including company letterhead with supplier/lab full address, purchase order number, lot number, production date, BUBD, test results with reference to specification min/max, blue ink handwritten signature, company logo in color and company seal/stamp. If product delivered falls within the quality discount table as outlined in the commodity specifications, those factors must be identified by an asterisk on the copies of the COA; and
 - (iii) Statement from the contractor certifying fumigation of product, if required; and
 - (iv) Proof of delivery as stipulated in the following table:

Delivery Basis	Proof of Delivery
Intermodal plant	A bill of lading, or similar document, showing count and over, short and damage, including documentation of carrier acceptance.

Intermodal Bridge	A bill of lading, consignee receipt, signed by the freight forwarder/ unloading stevedore, as proof of delivery at the intermodal bridge point, or similar document signed by the unloader and receiver showing count and over, short and damage.
F.A.S. Vessel	A WBSCM Good Receipt entered by the freight forwarder/unloading stevedore, or proof of delivery document signed by the unloader or receiver at the FAS position showing count and over, short and damage (e.g., Dock Receipt, Consignee Receipt).

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

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

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

- (1) Copy of signed and dated on board Ocean Bill of Lading or copy of Mate's Receipt (vessel under and over fills in excess of 5% to be settled in cash at market value determined by the Government on the day following the Bill of Lading date);
- (2) FGIS Official (original) Export Weight;
- (3) FGIS Official (original) Clear White Grade Inspection Certificates;
- (4) FGIS Protein Certificate, if protein analysis is required;
- (5) FGIS Aflatoxin Certificate, if aflatoxin testing is required;
- (6) FGIS Vomitoxin Certificate, if Vomitoxin testing is required;
- (7) FGIS or commercial private laboratory certificate for falling number, if falling number analysis is required; and
- (8) Fumigation certificate issued by the fumigator and a signed statement on FGIS letterhead attesting that the fumigation was witnessed by a FGIS representative, if required.

(d) For f.o.b. vessel shipments - bulk oils and tallow, the contractor shall submit the following proof of delivery and/or inspection documents.

- (1) Copy of signed and dated on board Ocean Bill of Lading or Mate's Receipt;
- (2) Chemical, analysis certificate issued by a National Oilseed Processors Association or American Fats and Oils Association, Inc. – approved commercial chemist on the chemist's letterhead, which includes
 - (a) The following certification:

“The undersigned hereby certifies that the chemical analysis certificate was issued as a result of the analysis of samples taken by

an independent surveyor, and that such chemical analysis was performed in accordance with methods prescribed in the Trading Rules of the National Oilseed Processors Association or American Fats and Oils Association, Inc. ”, as applicable;

- (b) A statement that the bulk oil/tallow met the analytical requirements of the specifications as provided in the contract;
- (3) A sampling certificate which includes a statement that the samples were drawn in accordance with American Oil Chemists Society Method C 1-47;
- (4) Survey report of the independent surveyor which must include the weight of the bulk oil/tallow delivered and a certification that the ship's tanks were examined and found suitable for receipt and carriage of the bulk oil/tallow.
- (e) For f.a.s. vessel – bag shipments with acceptance occurring at final contracted destination. The contractor shall submit the following proof of delivery and/or inspection documents:
 - (1) Commercial Bill of Lading; and
 - (2) Proof of delivery as evidenced by a dock receipt, consignee receipt signed by the freight forwarder/ unloading stevedore, as proof of delivery at the f.a.s. position or similar documents signed by the unloader and receiver showing count and over, short and damage.
- (f) For Instore delivery
 - The contractor shall submit the following proof of delivery and/or inspection documents:
 - (1) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (2) Form KC-228 or negotiable warehouse receipts.

52.232-11 Extras (Apr 1984)

52.232-17 Interest (May 2014)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.232-23 Assignment of Claims (May 2014)

USDA forms CCC-251 (Notice of Assignment) and CCC-252 (Instrument of Assignment) may be obtained at: <https://www.ams.usda.gov/resources/ccc-251-ccc-252-notice-assignment-form> or the contractor may use its own forms provided the forms are essentially consistent with CCC-251 and CCC-252 in content.

52.232-33 Payment by Electronic Funds Transfer-System for Award Management (Oct 2018)

52.232-39 Unenforceability of Unauthorized Obligations (Jun 2013)

- (a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:
- (1) Any such clause is unenforceable against the Government.
 - (2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse- wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.
 - (3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.
- (b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.
- (End of clause)

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

52.233-1 Disputes (May 2014)

52.233-3 Protest after Award (Aug 1996)

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

52.242-13 Bankruptcy (Jul 1995)

[Applicable for contracts exceeding the Simplified Acquisition Threshold of \$250,000.]

52.242-15 Stop-Work Order (Aug 1989)

52.242-17 Government Delay of Work (Apr 1984)

52.243-1 Changes-Fixed Price (Aug 1987)

52.244-6 Subcontracts for Commercial Items (Jan 2019)

[The clause is applicable for contracts exceeding \$5.5 million.]

52.246-2 Inspection of Supplies - Fixed-Price (Aug 1996)

Pursuant to FAR 46.401(b) & (c), the Government reserves the right to perform quality assurance at source; source includes, but are not limited to, contractor’s manufacturing facility, packaging facility, warehouse, in-house laboratory, subcontractor’s facilities, etc.

52.246-11 Checkloading for Dry, Edible Beans for International Food Aid Programs. (Aug 2019)

- (a) Pursuant to contract clause 52.246-2, Inspection of Supplies—Fixed Price, all dry, edible beans shipped under contract shall be checkloaded by FGIS or its designee at origin. The contractor is responsible for giving advance notice to FGIS for a checkloader to be present. If FGIS is in residence in the contractor's plant, contractor shall give FGIS no less than one and no more than two workdays advance notice. If FGIS is not in residence in the contractor's plant, contractor shall give FGIS no less than two and no more than seven days advance notice. At the contractor's option, it may elect to arrange for inspection and checkloading at the contracted place of delivery. In such case, contractor shall give FGIS no less than two and no more than seven days advance notice.
- (b) The results of the checkloading will be reported on a commodity inspection certificate.
- (c) The cost of checkloading, wherever performed, shall be for the account of the contractor.
- (d) Checkloading shall not relieve the contractor of its responsibility to deliver a product meeting contract requirements or constitute a waiver of any of the Government's rights under the contract.

52.246-11 Higher-Level Contract Quality Requirement (Dec 2014)

- (a) The Contractor shall comply with the higher-level quality standard(s) listed below.
 - 4.0, Quality Management System
 - 5.1, Management Commitment
 - 5.3, Quality Policy
 - 5.5, Responsibility, Authority, Communication
 - 5.6, Management Review (Limited to 5.6.1 and 5.6.2)
 - 6, Resource Management
 - 7.1, Planning of Product Realization
 - 7.2, Customer Related Processes
 - 7.4, Purchasing Process
 - 7.5, Production and Service Provision
 - 7.6, Control, Monitoring and Measuring Devices
 - 8.0, Measurement, Analysis and Improvement

CPP's Quality Assurance Surveillance Plan defines the Government's methodology for monitoring contractor compliance with the higher-level standard and can found on the Commodity Operations website at: <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Comm-Operations/pdf/qasp.pdf>.

The ISO 9001-2000 standard can be ordered from the ANSI Electronics Standards Store at <http://www.ansi.org>. Official ISO certification is not required.

(b) The Contractor shall include applicable requirements of the higher-level quality standard(s) listed in paragraph (a) of this clause and the requirement to flow down such standards, as applicable, to lower-tier subcontracts, in—

(1) Any subcontract for critical and complex items (see 46.203(b) and (c)); or

(2) When the technical requirements of a subcontract require—

- i. Control of such things as design, work operations, in-process control, testing, and inspection; or
- ii. Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

(End of Clause)

52.246-16 Responsibility for Supplies (Apr 1984)

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

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

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

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

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

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

(End of clause)

4A52.246-17 Risk of Loss (Aug 2019)

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

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

- from the contractor at the point where the supplies come to rest in the warehouse/berth/terminal/ transload facility designated by the ocean carrier;
- (ii) Delivery of the supplies on board the ocean vessel at the named port of shipment specified in the contract, if transportation is f.o.b. vessel;
 - (iii) Delivery of the supplies when placed on board the conveyance at named point of origin, if transportation is Intermodal Plant;
 - (iv) Delivery of the supplies to the carrier on rail cars, trucks, or carrier- supplied conveyance at the named bridge point, if transportation is Intermodal Bridge;
 - (v) Delivery of the supplies to the carrier on rail cars, trucks, or carrier- supplied conveyance at the bridge-port point, if transportation is Intermodal Bridge-Port.
 - (vi) Receipt by the Government of a warehouse receipt or a certified Form KC-228 covering supplies being delivered, if delivered Instore.
- (b) Paragraph (a) of this clause shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (a) of this clause shall apply.
 - (c) Under paragraph (a) of this clause the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.
- (End of clause)

4A52.246-18 Acceptance

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

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

4A52.247-37 Miscellaneous Contract Requirements for F.o.b. Vessel Delivery

- (a) The Government will furnish the contractor at least ten (10) days advance notice of vessel readiness, unless stated otherwise in the IFB.
- (d) Contractor must forward original Mate's Receipt to the Government's representative within 48 hours after completion of vessel loading.
- (e) If multiple contracts are awarded on an IFB to the same contractor who has designated the same loading berth, the contractor shall complete loading in one continuous berthing. If the contractor elects not to complete loading in one continuous berthing, the contractor will be liable for any charges associated with shifting and reberthing as provided in the Charter Party.
- (f) Contractor agrees to load the Government's nominated vessels in rotation with all vessels for loading at the elevator based on when vessels file and are accepted as ready-to-load in all respects. In the event that the contractor, for its own convenience, elects to by-pass the Government's nominated vessels to load a vessel which filed and was accepted later than the Government's nominated vessel, such action will be construed as failure or refusal of the contractor to perform.

- (g) Contractor will be liable to the Government for any actual damages suffered by the Government resulting from failure or refusal of the contractor to perform, which is not excusable under the Excusable Delay clause. Such actual damages may include, but are not limited to, the cost of demurrage, inter-port vessel relocation, vessel discharge costs, reprocurement costs, and claims by carriers for damages resulting from delays in loading resulting from the commodity not being available for loading, or for delays or slowness of the vessel loading.
- (h) The contractor shall submit Advance Shipping Notifications (ASNs) in WBSCM within 24 hours of completion of vessel loading.

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

452.247-70 Delivery Location (Feb 1988)

Shipment of deliverable items, other than reports, shall be to locations selected from the vendor's offer and will be provided at time of award.

52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form) (Apr 1984)

[Applicable for contracts of \$250,000 or less.]

52.249-2 Termination for Convenience of the Government (Fixed-Price) (Apr 2012)

[Applicable for contracts exceeding \$250,000.]

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

52.252-2 Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://acquisition.gov/far/index.html>

https://www.dm.usda.gov/procurement/policy/docs/AGAR_t_hru_Deviation_18.01.doc

(End of clause)

52.252-4 Alterations in Contract (Apr 1984)

52.253-1 Computer Generated Forms (Jan 1991)

II. Solicitation Provisions

Note: Items marked with an asterisk (*) have been tailored in the addenda below in **B**.

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.

52.204-8 Annual Representations and Certifications (Oct 2019)

- (a) (1) The North American Industry classification System (NAICS) code for this acquisition is _____ *[insert NAICS code]*.
- (2) The small business size standard is _____ *[insert size standard]*.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (i) (1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.
- (2) If the provision at 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:
- ☐ (i) Paragraph (d) applies.
- ☐ (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.
- (j) (1) The following representations or certifications in SAM are applicable to this solicitation as indicated:
- (i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—
- (A) The acquisition is to be made under the simplified acquisition procedures in Part 13;
- (B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or
- (C) The solicitation is for utility services for which rates are set by law or regulation.
- (ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.
- (iii) 52.203-18, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements—Representation. This provision applies to all solicitations.

- (iv) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the provision at 52.204-7, System for Award Management.
- (v) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—
 - (A) Are not set aside for small business concerns;
 - (B) Exceed the simplified acquisition threshold; and
 - (C) Are for contracts that will be performed in the United States or its outlying areas.
- (vi) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation.
- (vii) 52.209-5; Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.
- (viii) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.
- (ix) 52.214-14, Place of Performance--Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.
- (x) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.
- (xi) 52.219-1, Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.
 - (A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.
 - (B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.
- (xii) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.
- (xiii) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.
- (xiv) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.
- (xv) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.
- (xvi) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
- (xvii) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA- designated items.

(xviii) 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation. This provision applies to solicitations that include the clause at 52.204-7.

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

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

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

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

(C) If the acquisition value is \$50,000 or more but is less than \$80,317, the provision with its Alternate II applies.

(D) If the acquisition value is \$80,317 or more but is less than \$100,000, the provision with its Alternate III applies.

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

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

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

(xxiv) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

___ (i) 52.204-17, Ownership or Control of Offeror.

___ (ii) 52.204-20, Predecessor of Offeror.

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

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

___ (v) 52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Certification.

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

___ (vii) 52.227-6, Royalty Information.

___ (A) Basic.

___ (B) Alternate I.

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

(k) The Offeror has completed the annual representations and certifications electronically in SAM accessed through <https://www.sam.gov>. After reviewing the SAM information, the

Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause	Title	Date	Change

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

(End of Provision)

52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in the provision at [52.204-26](#), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of the provision at [52.212-3](#), Offeror Representations and Certifications-Commercial Items.

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

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.

(d) *Representation.* The Offeror represents that—

(1) It ☐ will, ☐ will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds “will” in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It ☐ does, ☐ does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds “does” in paragraph (d)(2) of this section.

(e) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded “will” in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model

number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded “does” in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

52.209-5 Certification Regarding Responsibility Matters (Oct 2015)

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

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

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

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

offeror checks “have”, the offeror shall also see 52.209-7, if included in this solicitation); and

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

(D) Have ☐, have not ☐, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

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

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

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

(2) Examples.

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

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

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

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

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

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

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

- (l) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (m) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror’s responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- (n) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (o) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of Provision)

52.209-7 Information Regarding Responsibility Matters (Oct 2018)

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

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

“Federal contracts and grants with total value greater than \$10,000,000” means—

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

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

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

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

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

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

(i) In a criminal proceeding, a conviction.

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

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

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

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

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

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

(r) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIS as required through maintaining an active registration in the System for Award Management which can be accessed via <https://www.sam.gov> (see 52.204-7).

(End of provision)

4A52.214-1 Electronic Submission of Bids /Submission of Bids

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

- (s) All prospective bidders are required to submit offers electronically via the USDA Web Based Supply Chain Management (WBSCM) system. All offers are subject to all requirements of WBSCM and the invitation, including but not limited to:
- (t) Obtaining a USDA eAuthentication logon ID and password to access WBSCM. (Contact the WBSCM Help Desk at (877) 927-2648 or WBSCMhelp@ams.usda.gov for information regarding logon IDs, passwords, and WBSCM system questions or concerns.)
- (u) Choosing its own Internet Service Provider (ISP) to transmit, translate, or carry data between the bidder and the Government. The bidder is responsible for the cost of its third-party network. The Government will not be responsible for any failure attributed to the transmission of the bid data prior to being accepted and stored on the Government's web server including, but not limited to, the following:
 - (1) Any failure of the bidder's computer hardware or software;
 - (2) Availability of the ISP;
 - (3) Delay in transmission due to the speed of the modem;
 - (4) Delay in transmission due to excessive volume of Internet traffic.
- (v) When authorized in an IFB, hard copy bids sent through regular mail or hand- delivered must be sealed in an envelope marked with the name and address of the bidder. Bids submitted by express mail shall be sealed inside a second envelope. All envelopes shall be plainly marked: "Do Not Open until Prescribed Time under Invitation for Bid Number (enter appropriate number)." For express mail bids, this statement shall be printed clearly on the outer express envelope, not the mailing label.

52.214-3 Amendments to Invitations for Bid (Dec 2016)

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (w)(1) Bidders shall acknowledge receipt of any amendment to this solicitation—
 - (i) By signing and returning the amendment,
 - (ii) By identifying the amendment number and date in space provided for this purpose on the form for submitting a bid,
 - (iii) By letter;
 - (iv) By facsimile, if facsimile bids are authorized in the solicitation; or
 - (v) By email, if email bids are authorized in the solicitation.
- (2) The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of Provision)

52.214-4 False Statements in Bids (April 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of Provision)

52.214-5 Submission of Bids (Dec 2016)

- (a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) --
 - (1) Addressed to the office specified in the solicitation; and
 - (2) Showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.
 - (x) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.
 - (y) Facsimile bids, modifications, or withdrawals will not be considered unless authorized by the solicitation.
 - (z) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.
- (End of Provision)

52.214-10 Contract Award—Sealed Bidding (July 1990)/ Evaluation of Bids

- (a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.
 - (aa) The Government may—
 - (1) Reject any or all bids;
 - (2) Accept other than the lowest bid; and
 - (3) Waive informalities or minor irregularities in bids received.
 - (bb) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.
 - (cc) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.
 - (dd) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

52.214-12 Preparation of Bids (Apr 1984)

- (a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.
- (ee) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.
- (ff) For each item offered, bidders shall
 - (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and
 - (2) enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule.

In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.
- (gg) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.
- (hh) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.
- (ii) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of Provision)

452.214-15 Period of Acceptance of Bids

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

52.214-22 Evaluation of Bids for Multiple Awards (Mar 1990)

In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that \$1000 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of Provision)

52.214-31 Facsimile Bids (Dec 1989)

- (a) *Definition.* "Facsimile bid," as used in this solicitation, means a bid, modification of a bid, or withdrawal of a bid that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.
- (jj) Bidders may submit facsimile bids as responses to this solicitation. These responses must arrive at the place and by the time, specified in the solicitation.

(kk) Facsimile bids that fail to furnish required representations or information or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration.

(ll) Facsimile bids must contain the required signatures.

(mm) The Government reserves the right to make award solely on the facsimile bid. However, if requested to do so by the Contracting Officer, the apparently successful bidder agrees to promptly submit the complete original signed bid.

(nn) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

(2) Compatibility characteristics of receiving facsimile equipment (*e.g.*, make and model number, receiving speed, communications protocol):

(oo) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following:

- (1) Receipt of garbled or incomplete bid.
- (2) Availability or condition of the receiving facsimile equipment.
- (3) Incompatibility between the sending and receiving equipment.
- (4) Delay in transmission or receipt of bid.
- (5) Failure of the bidder to properly identify the bid.
- (6) Illegibility of bid.
- (7) Security of bid data.

(End of Provision)

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

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of Provision)

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

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of Provision)

452.219-70 Size Standard and NAICS Code Information

Commodity	(USDA Commodity Requiremen	NAICS Code	Small Business Size Standard
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All Purpose Wheat Flour/Bread Flour Bulgur Wheat/Soy - Fortified Bulgur Cornmeal Corn-Soy Blend Plus Soy-Fortified Cornmeal Super Cereal Plus Wheat Soy Blend	(WFBF) (BWSF) (CM) (CSBP) (SFCM) (SCP) (WSB)	311211	1,000
Milled Rice/Fortified Milled Rice(Bagged) Milled Rice (Bulk) Rice Products	(MR) (KCPG) (RP)	311212	500
Crude or Refined Corn Oil	(BOT)	311221	1,250
Fully Refined Soybean Oil-Bulk Crude Degummed Soybean Oil-Bulk Soybean Meal-Bulk Value Added Soy Products	(BOT) (BOT) (BOT) (VASP)	311224	1,000
Vegetable Oils Sunflower Seed Oil Corn Oil	(VO) (SFSO) (CO)	311225	1,000
Ready-To-Use Supplementary Food Ready-To-Use Therapeutic Food	(RUSF) (RUTF)	311340	1,000
Dehydrated Potato Products	(DPP)	311423	750
Dried Dairy Ingredients	(DDI)	311514	750
Tallow	(BOT)	311613	750
Fortified Poultry-Based Spread	(FPBS)	311615	1,250
Canned Salmon	(CPS)	311710	750
Peanut Products	(PP)	311824	750
Bags	(KCP BAGS)	314910	500
Bagged Grain Dry Edible Beans Grain (Bulk) Peas & Lentils	(KCBG) (DEB) (KCPG) (PL)	311999	500

North American Industrial Classification System Code(s) and business size standard(s) describing the products and/or services to be acquired under this solicitation are listed above. The small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

52.222-24 Pre-award On-Site Equal Opportunity Compliance Evaluation (Feb 1999)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or

more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

(End of Provision)

52.225-4 Buy America Act- Free Trade Agreements-Israeli Trade Act Certificate (May 2014)

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

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

Line Item No.:	Country of Origin:

[List as necessary]

- (c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “Buy American--Free Trade Agreement--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:

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[List as necessary]

- (d) The Government will evaluate offers in accordance with the policies and procedures of [Part 25](#) of the Federal Acquisition Regulation.

(End of provision)

52.225-6 Trade Agreements Certificate (May 2014)

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

Other End Products

Line Item No.	Country of Origin:

[List as necessary]

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

(End of Provision)

52.225-25 Prohibitions on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran - Representation and Certifications (Aug 2018)

- (a) *Definitions.* As used in this provision--
Person--

(1) Means--

(i) A natural person;

- (ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and
- (iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and
- (2) Does not include a government or governmental entity that is not operating as a business enterprise.

Sensitive technology—

- (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—
 - (i) To restrict the free flow of unbiased information in Iran; or
 - (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and
- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).
- (b) The offeror shall email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.
- (c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with 25.703-4, by submission of its offer, the offeror--
 - (1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;
 - (2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and
 - (3) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,500 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).
- (d) Exception for trade agreements. The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if—
 - (1) This solicitation includes a trade agreements notice or certification (e.g., 52.225-4, 52.225-6, 52.225-12, 52.225-24, or comparable agency provision); and
 - (2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

452.228-70 Alternative Forms of Security (Nov 1996)

If furnished as security, money orders, drafts, cashier's checks, or certified checks shall be drawn payable to: USDA/CCC (Applicable for contracts that require a performance bond.)

52.232-15 Progress Payments Not Included (Apr 1984)

A progress payments clause is not included in this solicitation, and will not be added to the resulting contract at the time of award. Bids conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive.

(End of Provision)

52.233-2 Service of Protest (Sep 2006)

- (a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____ . *[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]*
- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of Provision)

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):

<https://www.acquisition.gov/far/> <http://www.usda.gov/procurement/policy/agar.html>

[Insert one or more Internet addresses]

(End of Provision)