

# SECTION A – COVER PAGE AND PROPOSAL SUBMISSION CHECKLIST

## A-1 Standard Form (SF) 1449

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b> <b>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>			1. REQUISITION NUMBER	PAGE 1 of 63		
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER 2000004733	6. SOLICITATION ISSUE DATE 05/25/2017		
7. FOR SOLICITATION INFORMATION CALL:	a. NAME Colleen Nicholson, Agricultural Marketing Specialist		b. TELEPHONE NUMBER (No collect calls) <a href="mailto:Colleen.nicholson@ams.usda.gov">Colleen.nicholson@ams.usda.gov</a> 202-720-0877		8. OFFER DUE DATE/ LOCAL TIME 06/12/2017, 01:00 pm Central Time	
	9. ISSUED BY CODE United States Department of Agriculture Agricultural Marketing Service, Commodity Procurement Staff 1400 Independence Avenue, SW STOP 0239 Washington, DC 20250-0239		10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: Partial FOR: See B-1(b) <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMAN-OWNED SMALL BUSINESS (WOSB) <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> ECONOMICALLY DISADVANTAGED WOMEN OWNED SMALL BUSINESS (EDWOSB) <input type="checkbox"/> SERVICE-DISABLED VETERAN - <input type="checkbox"/> 8(A) NAICS: 311421 BUSINESS SIZE STANDARD: 1,000 Employees			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS		<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	13b. RATING		
15. DELIVER TO CODE Multiple Locations as to be specified on individual Delivery Orders		16. ADMINISTERED BY CODE See Block 9		14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP		
17a. CONTRACTOR/OFFEROR CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY CODE See Block 9				
TELEPHONE NO.		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BELOW IS CHECKED <input checked="" type="checkbox"/> SEE PARAGRAPH C(18)(g)				
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER						
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Product: Canned and Frozen Vegetables (see schedule), per USDA Specification  Contract Type: Firm-Fixed-Price (FFP), Indefinite Delivery, Indefinite Quantity (IDIQ)  Period of Performance: Date of Award to 09/30/2018  See Schedule on the following pages.					
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For Govt. Use Only)		
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA			<input checked="" type="checkbox"/> ARE ATTACHED			
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA			<input type="checkbox"/> ARE NOT ATTACHED			
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED			<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR			31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (Type or print)	30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or print) David Munford, Contracting Officer		31c. DATE SIGNED		

## A-2 Proposal Submission Checklist

The following form is provided for the offeror's convenience. The offeror must include all of the following documents with its proposal to qualify as responsive—

### Proposal Submission Checklist

#### SF 1449:

\_\_\_\_\_ Fill in Block 17a (Contractor Information; Code and Facility Code not required)

\_\_\_\_\_ Sign in Block 30a, print name in Block 30b, and date in Block 30c

\_\_\_\_\_ Upload in PDF format into WBSCM

#### Provide acknowledgement of any/all amendments (SF-30)

\_\_\_\_\_ Fill in Block 8 (Contractor Information)

\_\_\_\_\_ Print name in Block 15a, sign in Block 15b, and date in Block 15c

\_\_\_\_\_ Upload in PDF format into WBSCM

#### Submit proposal parts required in section E-2 of solicitation

##### **Non-price factors**

\_\_\_\_\_ Subfactor 1 – Compliance, uploaded in PDF or Excel format into WBSCM, if applicable.

\_\_\_\_\_ Subfactor 2 – Management of Workforce Practices and Policies, uploaded in PDF format into WBSCM.

\_\_\_\_\_ Subfactor 3 – Past Performance, uploaded in PDF format into WBSCM.

##### **Price factor**

\_\_\_\_\_ Offer Prices – Entered directly into WBSCM

\_\_\_\_\_ Constraints – Entered directly into WBSCM

**Please verify that you have included the above specified requirements for a complete proposal submission. Failure to include the above specified requirements may deem the offeror non-responsive. If you have any question regarding the specified requirements please refer to the solicitation or contact the contract specialist identified in block 7a and 7b of the SF1449 (first page) of this solicitation.**

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SECTION B – SCHEDULE OF COMMODITIES

**B-1 CONTRACT LINE ITEM NUMBERS (CLINS)**

a) **Please see excel file titled “Part B – Schedule Jan 2018 – Sept 2018” attached to the solicitation in WBSCM.**

Note: Pricing shall be the same for all delivery points within each State and be inclusive of all delivery charges, including multiple stops. Trucks may have from one to three delivery stops. If multiple delivery stops are required and some of the stops are in different States, the portion of the load being delivered within each State shall be at the price applicable to that State.

b) Partial Set-Asides are as follows:

<b>Material Number</b>	<b>Supplies/Services</b>	<b>Set-Aside</b>	<b>Percent</b>
100331	POTATOES WHITE SLICES CAN 24/300	SB	50%
100307	BEANS GREEN CAN 6/10	SB	25%

This acquisition is unrestricted for all other materials.

- 1) **ALL OFFERORS MUST BE QUALIFIED PRIOR TO AWARD AND SUBMISSION OF ANY DELIVERABLES UNDER THIS CONTRACT.**  
Information concerning qualification requirements can be obtained from the source identified in Section C under [FAR 52.209-1, Qualification Requirements](#).
- 2) All contracts issued will be IDIQ contracts and orders will be placed through the issuance of individual delivery orders in accordance with the terms and conditions listed in this document. The Guaranteed Minimum (G. Min) quantity will be equal to approximately one full truckload, the Estimated Quantities are based on next year’s demands, and the Not to Exceed (NTE) quantities are the Estimated Quantities increased by twenty percent (20%). AMS anticipates making multiple awards from each line item without exceeding the offerors’ identified delivery constraints. Therefore, award may be made to an offeror for all, some, or none of the NTE quantities identified for each line item.

Delivery orders in excess of the constraint levels identified by offerors will be issued by mutual agreement between the Government and the contractor. The Government anticipates purchasing the Estimated Quantities. However, the contractor is cautioned that the Government does not guarantee that any quantities in excess of the Guaranteed Minimum indicated in the attached schedule will be ordered under this contract.

Award will be made by individual CLIN based on each offeror's proposed price, delivery constraints per material, and delivery period identified by each offeror in their proposal.

- 3) Offerors may enter constraints, to include the total maximum number of truckloads for the life of the contract. The offeror may enter constraints for specific delivery periods within the overall period of performance. Offerors must indicate constraints for delivery periods in which no shipments can be made by entering a constraint of zero, "0". If no constraints are entered, AMS will interpret this to mean that the offeror is in no way limited in its capacity to deliver up to the total amount solicited for that delivery period.
- 4) Offerors will submit a unit price in WBSCM, including **all costs associated through final delivery**, for all contract line items (CLINs) by State, that they propose offering during the period of performance (See "Part B – Schedule Jan 2018 – Sept 2018" for CLINs). Offerors are required to enter a price for each and every state.
- 5) In cases of constraints, the Government intends to meet its full requirement by awarding the remaining quantities to the qualified offeror with the next lowest price for that CLIN. The Government reserves the right to make multiple awards.
- 6) USDA will accept product produced in calendar year 2017 and calendar year 2018 for deliveries made under resulting contracts. Product must be produced according to the applicable Commodity Specification (see [Exhibit 1](#)) and meet the requirements within.
- 7) When delivery instructions state that the contractor's commodity is to be trans-loaded at load port into a 40' Ocean Container, the contractor is required to configure the commodity being shipped on no more than 20 pallets. If the contractor is shipping in a trailer larger than 40', they are also required to meet the aforementioned configuration requirement. If the contractor fails to follow these instructions, any damage or charges incurred will be at the contractor's expense, no exceptions. This includes damage due to improper blocking or bracing during transit and charges for re-stacking/re-configuration of pallets.
- 8) Some ports may charge wharfage fees. Offerors are responsible for researching and paying all costs associated with transportation fees including wharfage fees.
- 9) Delivery shall be:
  - a) FOB Destination;
  - b) Inclusive of all transportation costs, including multiple stops;
  - c) Within the period specified in each delivery order. (Delivery orders will be issued for two half-month delivery periods at a time at least 45 days prior to the first day of the first delivery period. Half-month periods will be between the first through fifteenth of the month or the sixteenth through the end of the month.) Also, the contractor shall provide an Advance Ship Notice (ASN)

- d) in compliance with the included [“Shipment and Delivery”](#) section; and
  - e) Within the states identified in the schedule with specific delivery locations identified in each delivery order.
- 10) Period of Performance: The period of performance under this contract is the date of award through 09/30/2018.
- 11) Place of Acceptance: Final acceptance of the product shall be at the destination specified under the contract/purchase order.
- 12) Questions regarding this solicitation must be submitted in writing via email to: Colleen Nicholson at [colleen.nicholson@ams.usda.gov](mailto:colleen.nicholson@ams.usda.gov). Questions submitted by other means or addressed to any other individual may not be answered.

## **SECTION C – CONTRACT CLAUSES**

### **C-1 FEDERAL ACQUISITION REGULATION CLAUSES INCORPORATED IN FULL TEXT**

#### **C-1.1 52.209-1 Qualification Requirements (FEB 1995)**

**[See EXHIBIT 6 – Qualification Requirements for Prospective Contractors Selling Commodities to USDA]**

- (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. Please contact:

(Name) Colleen Nicholson  
(Email) [colleen.nicholson@ams.usda.gov](mailto:colleen.nicholson@ams.usda.gov)

- (c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name \_\_\_\_\_

Manufacturer's Name   N/A  \_\_\_\_\_

Source's Name \_\_\_\_\_

Item Name \_\_\_\_\_

Service Identification   N/A  \_\_\_\_\_

Test Number   N/A  \_\_\_\_\_ (to the extent known)

(d) 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.

(e) 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.

(f) 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.



**C-1.2 52.211-11 Liquidated Damages – Supplies, Services, or Research and Development (SEP 2000)**

(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 **\$.0025 per pound** per calendar day of delay, not to exceed 45 days of delay.

(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 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.  
Act.

**C-1.3 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (JAN 2017)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(3) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(4) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004)(Public Laws 108-77 and 108-78 ([19 U.S.C. 3805 note](#))).

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

X (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 4704](#) and [10 U.S.C. 2402](#)).

- \_X\_ (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Oct 2015) ([41 U.S.C. 3509](#))).
- \_\_ (3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)
- \_\_ (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2016) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).
- \_\_ (5) [Reserved].
- \_\_ (6) [52.204-14](#), Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).
- \_\_ (7) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).
- \_X\_ (8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Oct 2015) (31 U.S.C. 6101 note).
- \_X\_ (9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313).
- \_\_ (10) [Reserved].
- \_\_ (11)(i) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) ([15 U.S.C. 657a](#)).
- \_\_ (ii) Alternate I (Nov 2011) of [52.219-3](#).
- \_X\_ (12)(i) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).
- \_\_ (ii) Alternate I (JAN 2011) of [52.219-4](#).
- \_\_ (13) [Reserved]
- \_\_ (14)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (Nov 2011) ([15 U.S.C. 644](#)).
- \_\_ (ii) Alternate I (Nov 2011).
- \_\_ (iii) Alternate II (Nov 2011).
- \_\_ (15)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (June 2003) ([15 U.S.C. 644](#)).
- \_\_ (ii) Alternate I (Oct 1995) of [52.219-7](#).
- \_\_ (iii) Alternate II (Mar 2004) of [52.219-7](#).
- \_X\_ (16) [52.219-8](#), Utilization of Small Business Concerns (Nov 2016) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).
- \_X\_ (17)(i) [52.219-9](#), Small Business Subcontracting Plan (Jan 2017) ([15 U.S.C. 637\(d\)\(4\)](#)).
- \_\_ (ii) Alternate I (Nov 2016) of [52.219-9](#).
- \_\_ (iii) Alternate II (Nov 2016) of [52.219-9](#).
- \_\_ (iv) Alternate III (Nov 2016) of [52.219-9](#).
- \_\_ (v) Alternate IV (Nov 2016) of [52.219-9](#).
- \_\_ (18) [52.219-13](#), Notice of Set-Aside of Orders (Nov 2011) ([15 U.S.C. 644\(r\)](#)).

- \_\_\_ (19) [52.219-14](#), Limitations on Subcontracting (Jan 2017) ([15 U.S.C. 637\(a\)\(14\)](#)).
  - \_X\_ (20) [52.219-16](#), Liquidated Damages—Subcontracting Plan (Jan 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
  - \_\_\_ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) ([15 U.S.C. 657 f](#)).
  - \_X\_ (22) [52.219-28](#), Post Award Small Business Program Rerepresentation (Jul 2013) ([15 U.S.C. 632\(a\)\(2\)](#)).
  - \_\_\_ (23) [52.219-29](#), Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) ([15 U.S.C. 637\(m\)](#)).
  - \_\_\_ (24) [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) ([15 U.S.C. 637\(m\)](#)).
  - \_X\_ (25) [52.222-3](#), Convict Labor (June 2003) (E.O. 11755).
  - \_X\_ (26) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (Oct 2016) (E.O. 13126).
  - \_X\_ (27) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015).
  - \_X\_ (28) [52.222-26](#), Equal Opportunity (Sept 2016) (E.O. 11246).
  - \_X\_ (29) [52.222-35](#), Equal Opportunity for Veterans (Oct 2015)([38 U.S.C. 4212](#)).
  - \_X\_ (30) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](#)).
  - \_X\_ (31) [52.222-37](#), Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).
  - \_X\_ (32) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
  - \_X\_ (33)(i) [52.222-50](#), Combating Trafficking in Persons (Mar 2015) ([22 U.S.C. chapter 78](#) and E.O. 13627).
  - \_\_\_ (ii) Alternate I (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).
  - \_\_\_ (34) [52.222-54](#), Employment Eligibility Verification (OCT 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)
  - \_\_\_ (35) [52.222-59](#), Compliance with Labor Laws (Executive Order 13673) (OCT 2016). (Applies at \$50 million for solicitations and resultant contracts issued from October 25, 2016 through April 24, 2017; applies at \$500,000 for solicitations and resultant contracts issued after April 24, 2017).
- Note to paragraph (b)(35):** By a court order issued on October 24, 2016, 52.222-59 is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, GSA, DoD and NASA will publish a document in the *Federal Register* advising the public of the termination of the injunction.

- \_\_\_ (36) [52.222-60](#), Paycheck Transparency (Executive Order 13673) (OCT 2016).
- \_\_\_ (37)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
  - \_\_\_ (ii) Alternate I (May 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- \_\_\_ (38) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693).
- \_\_\_ (39) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).
- \_X\_ (40)(i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).
  - \_\_\_ (ii) Alternate I (Oct 2015) of [52.223-13](#).
- \_\_\_ (41)(i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).
  - \_\_\_ (ii) Alternate I (Jun 2014) of [52.223-14](#).
- \_\_\_ (42) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).
- \_\_\_ (43)(i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).
  - \_\_\_ (ii) Alternate I (Jun 2014) of [52.223-16](#).
- \_\_\_ (44) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011) (E.O. 13513).
- \_\_\_ (45) [52.223-20](#), Aerosols (JUN 2016) (E.O. 13693).
- \_\_\_ (46) [52.223-21](#), Foams (JUN 2016) (E.O. 13693).
- \_\_\_ (47)(i) [52.224-3](#), Privacy Training (JAN 2017) (5 U.S.C. 552a).
  - \_\_\_ (ii) Alternate I (JAN 2017) of [52.224-3](#).
- \_\_\_ (48) [52.225-1](#), Buy American—Supplies (May 2014) ([41 U.S.C. chapter 83](#)).
- \_\_\_ (49)(i) [52.225-3](#), Buy American—Free Trade Agreements—Israeli Trade Act (May 2014) ([41 U.S.C. chapter 83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).
  - \_\_\_ (ii) Alternate I (May 2014) of [52.225-3](#).
  - \_\_\_ (iii) Alternate II (May 2014) of [52.225-3](#).
  - \_\_\_ (iv) Alternate III (May 2014) of [52.225-3](#).
- \_X\_ (50) [52.225-5](#), Trade Agreements (OCT 2016) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).
- \_\_\_ (51) [52.225-13](#), Restrictions on Certain Foreign Purchases (June 2008) (E.O.’s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_ (52) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

\_\_ (53) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ([42 U.S.C. 5150](#)).

\_X\_ (54) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) ([42 U.S.C. 5150](#)).

\_\_ (55) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (Feb 2002) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

\_\_ (56) [52.232-30](#), Installment Payments for Commercial Items (Jan 2017) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

\_\_ (57) [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).

\_\_ (58) [52.232-34](#), Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).

\_\_ (59) [52.232-36](#), Payment by Third Party (May 2014) ([31 U.S.C. 3332](#)).

\_\_ (60) [52.239-1](#), Privacy or Security Safeguards (Aug 1996) ([5 U.S.C. 552a](#)).

\_\_ (61) [52.242-5](#), Payments to Small Business Subcontractors (JAN 2017)([15 U.S.C. 637\(d\)\(12\)](#)).

\_\_ (62)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

#### **C-1.4 52.216-18 Ordering (OCT 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from **the date of award** through **9/30/2018**.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

#### **C-1.5 52.216-19 Order Limitations (Oct 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than **one truckload per order**, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor --

(1) Any order for a single item in excess of [**TBD based on offeror’s constraints**];

(2) Any order for a combination of items in excess of [**TBD based on offeror's constraints**]; or

(3) A series of orders from the same ordering office within **15** days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

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

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

**C-1.6 52.232-19 Availability of Funds for the Next Fiscal Year (APR 1984)**

Funds are not presently available for performance under this contract beyond 9/30/2017. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond 9/30/2017, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

**C-1.7 52.232-40 Providing Accelerated Payment to Small Business Subcontractors (DEC 2013)**

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

**C-1.8 52.247-36 F.a.s. Vessel—Port of Shipment (APR 1984)**

(a) The term “f.a.s. vessel, port of shipment,” as used in this clause, means free of expense to the Government delivered alongside the ocean vessel and within reach of its loading tackle at the specified port of shipment.

(b) The Contractor shall –

(1) (i) Pack and mark the shipment to comply with contract specifications; or  
(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Deliver the shipment in good order and condition alongside the ocean vessel and within reach of its loading tackle, at the point of delivery and on the date or within the period specified in the contract; and  
(ii) Pay and bear all applicable charges, including transportation costs, wharfage, handling, and heavy lift charges, if necessary, up to this point;

(3) Provide a clean dock or ship’s receipt;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point specified in the contract; and

(5) At the Government’s request and expense, assist obtaining the documents required for (i) Exportation; or (ii) Importation at destination.

**C-1.9 52.247-48 F.o.b. Destination—Evidence of Shipment (FEB 1999)**

If this contract is awarded on a free on board (f.o.b.) destination basis, the Contractor—

Shall not submit an invoice for payment until the supplies covered by the invoice have been delivered to the destination; and

Shall retain, and make available to the Government for review as necessary, the following evidence of shipment documentation for a period of 3 years after final payment under the contract:

If transportation is accomplished by common carrier, a signed copy of the commercial bill of lading for the supplies covered by the Contractor's invoice, indicating the carrier's intent to ship the supplies to the destination specified in the contract;

If transportation is accomplished by parcel post, a copy of the certificate of mailing; or

If transportation is accomplished by other than common carrier or parcel post, a copy of the delivery document showing receipt at the destination specified in the contract.

The Contractor is required to submit evidence of shipment and receipt documentation, along with a signed bill of lading with its invoice.

**C-1.10 52.252-2 Clauses Incorporated by Reference (FEB 1998)**

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

<https://www.acquisition.gov/>

**C-2 FEDERAL ACQUISITION REGULATION CLAUSES INCORPORATED BY REFERENCE**

The following clause(s) are incorporated by reference—

**C-2.1 52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)**

**C.2.2 52.212-4 Contract Terms and Conditions—Commercial Items (JAN 2017)**

**C.2.3 Addendum to 52.212-4 Contract Terms and Conditions—Commercial Items (JAN 2017)**

Paragraph (a) is replaced by FAR 52.246-2 Inspection of Supplies – Fixed Price (AUG 1996), which is hereby incorporated by reference.

Paragraph (g) is replaced by the “[Invoices and Payment Process](#)” described in the USDA/AMD Specific Requirements located within this section.



**C.3 AGRICULTURE ACQUISITION REGULATION (AGAR) CLAUSES INCORPORATED IN FULL TEXT**

**C.3.1 AGAR 452.216-73 Minimum and Maximum Contract Amounts (FEB 1988)**

During the period specified in FAR Clause 52.216-18 Ordering, the Government shall place orders totaling a minimum of \$11,500.00 but not in excess of \$41,991,000.00.

The guaranteed minimum will apply to each contract awarded. The total of all contracts awarded will not exceed the amount shown above.

**C-3.2 AGAR 452.209-71 Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants (FEB 2012)**

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

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

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

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

**C.4 AGRICULTURE ACQUISITION REGULATION (AGAR) CLAUSE(S) INCORPORATED BY REFERENCE**

The following clause is incorporated by reference—

**AGAR 452.247-72 Packing for Domestic Shipment (FEB 1988)**

## C.5 USDA/AMS SPECIFIC REQUIREMENTS

### C.5-1 Domestic Products

All products used in fulfilling contracts or delivery orders awarded must be of 100 percent domestic origin, meaning that they are produced and processed from products, which were produced, raised, and processed only in the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as “the United States”). 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 under this contract. 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 52.215-2.

The Contractor agrees to include this domestic origin certification clause in all subcontracts for products used in fulfilling contracts awarded under Contract. The burden of proof of compliance is on the Contractor.

Domestic origin verification requirements must be included in the Contractor’s technical proposal, if applicable. Otherwise, prior to any work performed under the applicable contract or purchase order that was awarded, the attached form (**EXHIBIT 3 – Domestic Origin Certification**) must be completed, and must be presented to an AMS representative, the Contracting Officer, or agent thereof upon request.

### C-5.2 Food Defense Requirements

Potential Contractor(s) and subcontractor(s) must have a food defense plan that provides for the security of a plant’s production processes and includes the storage and transportation of pre-production raw materials and other ingredients and post-production finished product. The plan shall address the following areas, as applicable: (1) food security plan management; (2) outside and inside security of the production and storage facilities; (3) slaughter and processing, including all raw material sources; (4) shipping and receiving; (5) storage; (6) water and ice supply; (7) mail handling; (8) personnel security; and (9) transportation, shipping, and receiving (includes the sealing of any transport conveyance for truck lot and less-than-truck lot quantities of finished product).

Prior to a contract or purchase order award, the documented and operational food defense plan will be audited by USDA, AMS. For fruit and vegetable products, nonconformance(s) will be addressed prior to contract or purchase order award.

Potential Contractors will have an opportunity to correct identified nonconformance(s) and modify their food defense plan. The frequency of any follow-up food defense audits will be determined by the Contracting Officer. Approved food defense audit is valid for twelve (12) months from the date of approval.

Eligible suppliers who receive contracts must have their documented food defense plan and supporting documentation readily available for review by the Contracting Officer or AMS agents. Records may be maintained on hard copy or electronic media. However, records maintained as electronic media will be made available in printed form immediately upon request by AMS or its agents.

All inquiries concerning audit requirements and scheduling should be forwarded to your local Grading Division office for clarification. Furthermore, USDA will not grant/accept any waiver requests for the food defense audits. It is the responsibility of the contractor and/or subcontractor to schedule the audit in a timely manner to ensure it has been completed and approved prior to the award of any contract.

### **C-5.3 Web-Based Supply Chain Management (WBSCM) System**

1. WBSCM Registration. Potential new suppliers must complete a WBSCM vendor registration form and meet all financial requirements prior to being entered into WBSCM. In addition, the firm must meet all technical requirements for producing the product prior to being able to submit offers in WBSCM. Refer to **EXHIBIT 6 - Qualification Requirements for Prospective Contractors Selling Commodities to USDA**. Instructions and additional information for new vendors are located on the AMS website at <http://www.ams.usda.gov/commoditypurchasing>.

A new supplier must designate a person(s) who will serve as the Central Vendor Administrator and a person(s) who is authorized to submit offers for the company during the approval process. Once approved, USDA will assign the roles in WBSCM and the vendor will be able to submit offers for those materials (commodities) that they are qualified to supply. In the event a vendor submits offers for materials they are not qualified to supply, the Contracting Officer will rule those offers as non-responsible and the offers will not be considered for those materials

The Corporate Vendor Administrator's responsibilities include: 1) entering all plant(s) and shipping point(s) that company plans to utilize for USDA production, 2) Assigning plant/headquarter staff member(s) to the appropriate plant(s) and shipping point(s), and 3) Assigning the roles to each staff member they will need to perform the various functions required in WBSCM.

Once the supplier has been approved and the proper role(s) assigned, they may access WBSCM to submit offers. The web address is:  
<https://portal.wbscm.usda.gov/irj/portal>.

2. Submission of Offers in WBSCM. Offers must be submitted via the Internet by accessing the WBSCM. **EXHIBIT 4** provides system and computer setting requirements for accessing WBSCM.

Offers submitted by any means other than WBSCM will be considered nonresponsive.

Once connected to WBSCM, follow the online procedures. Click on the “Help” button for detailed instructions on using the system, or contact the WBSCM Help Desk.

AMS will not be responsible for any failure attributed to the transmission of the offer data prior to being accepted and stored in WBSCM including, but not limited to the following:

1. Any failure of the offeror’s computer hardware or software.
2. Availability of the offeror’s Internet service provider.
3. Delay in transmission due to the speed of the offeror’s modem.
4. Delay in transmission due to excessive volume of Internet traffic.

Offerors are advised to allow sufficient time to input offers on the offer due date due to high volume of internet traffic.

Offers, modifications, or withdrawals of offers must be received in WBSCM by the time prescribed in the applicable Solicitation. Whether an offer, modification, or withdrawal is received within the time limitation will be determined by the latest time recorded in WBSCM.

3. WBSCM OFFER FORM. Offers submitted in WBSCM must consist of the following areas: 1) response to attribute questions associated with the specific solicitation, 2) offer prices(s) on the site number(s) the firm want(s) to be considered for award, and 3) total quantity the company wants to be awarded (constraints in truck-lot or cases). All sections of the offer form must be completed, including prices and constraints, prior to final submission in WBSCM.

In addition, the offeror must attach all required documents to the vendor’s offer in WBSCM, including but not limited to the offeror’s technical proposal, additional cost proposal information and any supporting documents to the cost proposal, and past performance information.

Complete the certifications (attributes questions) using the following as a guide.

1. Offer certifies that the offer is made subject to the USDA Specification; this Solicitation; the Agriculture Acquisition Regulations (AGAR); and the Federal Acquisition Regulations (FAR).
2. Timely Performance Certification: All products required under any existing USDA contract(s)/purchase order(s) or subcontract(s) with a not-later-than delivery date prior to this bid opening. Choose one:
  - (a) Have been delivered.
  - (b) Have not been delivered.
  - (c) Have not been delivered, but the Offeror has notified the Contracting Officer.
  - (d) There are no existing contracts.
3. Offeror requests HUBZone small business price evaluation preference (YES) (NO). Applies only to firms certified in the Small Business Administration's Historically Underutilized Business Zone program (FAR subpart 19.13). Must be the manufacturer/producer of the product to receive a price preference.
4. Furnish name, title, phone number and e-mail address of person submitting this offer (must be an officer of the company or a person authorized to execute contracts on behalf of the offeror).
5. Is the offeror an entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States? (YES) (NO) You must answer the next 3 questions if the answer for this question is yes.
6. Has the offeror been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of offer? (YES) (NO)
7. Has the offeror had any officer or agent of offeror convicted of a felony criminal violation for actions taken on behalf of offeror under Federal or State law in the 24 months preceding the date of offer? (YES) (NO)
8. Does the offeror have any unpaid Federal tax liability assessed, which all judicial and administrative remedies have been exhausted/lapsed, that is not being paid in a timely manner pursuant to agreement with the authority responsible for collecting it? (YES) (NO)

Note: There may be additional certification (attribute) questions depending on the material that is being offered.

#### **C-5.4 Contract Compliance**

The contractor must assure compliance with all requirements of this Contract and/or USDA Commodity Specification(s) prior to delivery of product to USDA for acceptance. Examination and certification by USDA is solely for the benefit of USDA and will not relieve the contractor of its obligation and responsibility to deliver a product which complies with all requirements of this Solicitation and/or Commodity Specification(s). USDA approval of any part of the production process, including but not limited to equipment, will not relieve the contractor of the responsibility for performing in accordance with the contract.

1. A copy of the original USDA Inspection and Grading Certificate issued at time of checkloading, if applicable, must accompany each shipment. **Canned products will be accepted for up to 18 months from the date of inspection.** Contractors will not need to have the canned products re-inspected after 12 months from the date of initial inspection and the products can be delivered up the 18 months following the inspection.

Each shipping container must be identified with a USDA Contract Compliance stamp with the applicable certificate number. A Grader, or other authorized personnel under the supervision of the Grader, will stamp one end of each shipping container prior to shipment. If there is inadequate space available on either end of the shipping container, the stamp may be applied to a side of the container.

#### **C-5.5 Shipment and Delivery**

Shipment and delivery must be made in accordance with this Contract, the Commodity Specification, and the applicable Delivery Order. The Contractor must complete the Advance Ship Notice (ASN) in WBSCM prior to delivery of the product to the awarded destination. Contractors are encouraged to create the ASN for the purchase order item number as soon as a delivery appointment has been scheduled, but not less than 24 hours. The Contractor must provide accurate information when creating the ASN. The ASN provides an alert to the appropriate recipient agency that the product will be shipped for a sales order.

The creation of the ASN does not relieve the Contractor or Subcontractor of their responsibility to obtain an unloading appointment. Delivery appointments shall be made as far in advance of expected delivery as possible, but not less than **72 hours** prior to delivery.

USDA has provided an excel template in a comma delimited (csv) format that allows the Contractor to upload delivery order line items that will create multiple ASNs.

When notified of shipments, consignees may request upgrading of delivery services or delivery to an alternate warehouse; for example, delivery within the consignee's premises or to a specific room within a building. Such delivery terms are beyond USDA contractual requirements. Any negotiations to upgrade services are between the Contractor and consignee and any additional charges for special delivery terms are between consignee and Contractor. Any charges invoiced to USDA for additional delivery services will be denied.

When making deliveries to more than one destination from the same railcar, the quantities required at each stop off must be placed in separate compartments under seal. Each railcar compartment must be stacked in a manner that will preclude containers shifting while in transit.

### **1. Loading and Sealing of Vehicles**

Loading must be in accordance with good commercial practices and the sealing must be done at origin under the supervision of a USDA, AMS certification agent or if applicable by a person authorized by the company to act on its behalf. Therefore, all delivery units—truck lot and less-than-truck lot (LTL) quantities—must be secured at all times prior to unloading with tamper-resistant, serially numbered, high-security seals. Suppliers of commodities, products and/or services shall be responsible for placing seal(s) on all doors of each transportation conveyance upon completion of loading or servicing. Seals shall be serially numbered, barrier-type and meet the American Society for Testing and Materials (ASTM) standards (F-1157-04) or the International Organization for Standards (ISO) 17712-2010. Seals shall be 1/8<sup>th</sup> inch diameter cable, high-security bolt, or equivalent. The contractor must maintain a record of each seal number used per truck lot and LTL delivery unit. Additionally, the contractor must ensure that the applicable seal identification number is on each bill of lading, shipment manifest, certificate, or delivery documents for each delivery destination.

When LTL delivery units are transported on the same trailer and destined for multiple recipients, the trailer must be sealed after each delivery. The seal number must be recorded on the appropriate delivery documents and correspond with the applied seal at the time of arrival at the next destination. It will be the responsibility of the contractor to provide a sufficient number of seals to the carrier service and to ensure that the trailer is sealed after each delivery destination. Failure to seal the trailer after each stop may result in rejection of the shipment by the recipient agency at the next scheduled stop and rejection of any subsequent deliveries on the trailer.

- a. Railcar. Each railcar must be sealed. The contractor is responsible for arranging for railcar deliveries of more than one delivery unit so that each

delivery unit contained in the same railcar can be completely separated and sealed.

- a. Truck or Piggyback. Truck or piggyback shipments must be sealed at origin. A delivery unit shipped by truck or piggyback which includes split deliveries to multiple destinations will require sealing after each drop.

If the load is rejected by the recipient agency, the Contractor shall return the load to its plant and have the product re-inspected for condition of container, and condition of the product (for frozen products), and reseal the truck in the presence of the USDA, AMS agent. The new seal number must be recorded, and a new certificate for condition of container must be issued and presented to the recipient agency. The Contractor is responsible for all costs (freight, re-inspection fees, etc.) associated with rejected loads.

## **2. F.O.B. Destination or F.A.S. Vessel**

If the commodity offer price is on the basis of delivery f.o.b. cars, or trucks at destination or f.a.s. vessel at designated ports, and if USDA orders delivery of the commodity in a manner or to destinations other than those stated in the contract, any additional cost of transportation and related services shall be for the account of USDA and any savings will accrue to USDA.

When a place of delivery is changed by USDA, the contract price shall be adjusted for any resulting increase or decrease in the cost of performance in accordance with best available information as determined by USDA. No adjustment shall be made for changes in transportation costs when commodities are identically priced for delivery regionally or nationally and the place of delivery is changed within the area to which the identical price applies. In all other cases, price adjustments due to changes in transportation costs shall be determined by USDA prior to shipment. If USDA orders delivery to a destination other than the original destination named in the contract, transportation costs adjustments will be made by the AMS Contracting Office.

## **3. Early Delivery**

The Contractor may deliver early if the recipient agency agrees to accept early delivery and upon AMS personnel being available to perform any necessary checkloading and final acceptance requirements, if applicable.

## **4. Compensation for Delays in Delivery**

Timely delivery is important to fulfill the nutritional and dietary needs of persons for whom the commodity is intended. Failure to deliver the commodity during the delivery periods, for reasons other than causes beyond the control and without the fault and negligence of the Contractor, may be grounds for termination of that line item, termination of the entire contract, or assessment of liquidated damages.



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. 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 Section C.6 for liquidated damages.

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.

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.

## **5. Checkloading**

- a. The Contractor shall not load the commodity for shipment unless, at the time of such loading, the commodity is checkloaded by USDA or by a person of the inspection or grading service designated by USDA. The Contractor is responsible for giving notice in sufficient time for a USDA agent to be present. The cost of checkloading, when applicable, shall be for the account of the Contractor. Checkloading refers to identifying the commodity which was previously inspected and found to meet contract requirements, examining the commodity at the time of loading or transferring for condition of containers and for compliance with labeling and container marking requirements, and determining the number of containers per car, truck, or lot.
- b. Checkloading by persons licensed or authorized by USDA, if applicable, shall not relieve the Contractor of the obligation to affect a delivery of the commodity meeting contract requirements or constitute a waiver of any of USDA's rights under the contract. The certificates issued as a result of such official checkloading shall be only prima facie evidence of the number and condition of containers.
- c. The Contractor shall be liable for all shortages which occur before delivery, except that if shipment is by common carrier, the Contractor shall not be liable for a shortage reported at destination unless it can be established, notwithstanding the checkloading certificate, that there was an actual shortage at the time of loading for shipment.

d. This paragraph (d) is not applicable to purchases delivered f.o.b. origin. If the shipment is by truck and USDA specifically requests "Exclusive Use of Vehicle," USDA will reimburse the Contractor for any additional transportation costs due to shipment under "Exclusive Use of Vehicle." The sealing of trucks as part of the checkloading procedure, when applicable, shall not be construed as such a request. In the absence of such a request by USDA, any additional cost of transportation and related services due to shipment under "Exclusive Use of Vehicle" shall be for the Contractor's account. The Contractor shall be responsible for making such arrangements as may be necessary to prevent the application of "Exclusive Use of Vehicle" charges when such charges result in higher transportation costs. The arrangements to be made by the Contractor may include an instruction to the checkloader not to seal the truck when the sealing will result in "Exclusive Use of Vehicle" charges. If, notwithstanding such arrangements, the checkloader seals the truck, the Contractor shall have the responsibility for removing the seals.

## **6. Obliteration of Markings**

The appearance in commercial or other channels of containers and container materials bearing markings required under the contract may cause USDA expense in determining whether commodities have been diverted from authorized use and in answering inquiries. The contractor agrees to take necessary action to prevent the appearance in commercial or other channels of any labels, bags, cans, can lids, cases, or any other type of packaging, either filled or unfilled (hereinafter referred to as "containers and container materials"), bearing markings specific to the contract (i.e. the "contract compliance stamp") including those held by the contractor or others, e.g., overruns. The following actions with respect to all inner and outer containers and container materials will constitute compliance with the intent of this clause: (a) complete obliteration of all markings specific to the contract with a permanent opaque paint, or removal of labels which bear such markings, and overlaying or replacing markings so obliterated or removed with commercial labeling; or (b) any other actions, approved by the Contracting Officer, which accomplish the intent of the foregoing.

### **C-5.6 Liability for Losses Due to Deterioration, Spoilage, or Recall**

#### **1. Loss Due to Deterioration or Spoilage**

The Contractor shall reimburse USDA for all losses due to deterioration or spoilage sustained by USDA for which the Contractor is responsible, but only if such losses are discovered within a reasonable time, as determined by USDA, after delivery. The Contractor agrees to reimburse USDA for such losses within 10 days after date of billing by USDA. That part of the commodity as to which USDA makes a claim based on deterioration or spoilage shall be held by USDA subject to disposition instructions of the Contractor (unless the nature of the deterioration or spoilage is such as to require condemnation and destruction as

determined by USDA or its authorized representative) but need not be held by USDA in excess of 30 days after USDA sends notice of such claim to the Contractor. In lieu of reimbursing USDA, the Contractor may replace the deteriorated or spoiled commodity with an equal quantity of commodity which conforms to all contract requirements and Commodity Specification, if such replacement is agreed to by USDA.

## **2. Loss Due to Product Recalled for Health or Safety Risk**

In the event the commodity or commodity product is recalled due to a health or safety risk, the Contractor is responsible for all costs associated with removal and replacement of recalled commodities or products, and reimbursement of State and local costs incurred as a result of the recall, as outlined in the Food and Nutrition Service's (FNS) Commodity Hold and Recall Process. A copy of this report can be obtained at: <http://www.fns.usda.gov/fdd/foodsafety/hold-recallpros.pdf>. These costs include, at a minimum, storage, transportation, processing, and distribution of the commodities or products.

### **C-5.7 Invoices and Payment Process**

#### **1. Submission of Invoice in WBSCM.**

Invoices requesting payment must be submitted by the Contractor electronically through WBSCM. Invoices for payment must include an electronic copy of the following documents:

- a. An official inspection and checkloading certificate(s), if applicable;
- b. The certificate of conformance, if applicable;
- c. The signed bill of lading (BOL) or other commercial receipt signed by a recipient agency evidencing delivery date and quantity of product delivered, or destination USDA inspection certificate or report evidencing delivery of product (Optional);
- d. Other required documents identified in the applicable Commodity Specification;
- e. Authorization letter from the Contracting Officer for reimbursement of extra cost, if applicable; and
- f. Any waivers granted by the Contracting Officer, if applicable.

Invoice must include the quantity of what is awarded on the Purchase Order unless a waiver has been granted by the Contracting Officer. Invoices must be submitted on a full truckload quantity, or multiples thereof; invoices for less than full truckload quantities may not be accepted. Invoice quantity must match the quantity awarded on the Purchase Order unless a waiver has been granted by the Contracting Officer.

Submission of an invoice when all contract terms and conditions have not been satisfied may subject the Contractor to civil and criminal penalties as provided in

Titles 15, 18, and 31 of the United States Code. The USDA will make payment to the Contractor of any amounts due with respect to each delivery invoiced.

In order for the contractor to receive payment on an invoice the following three action items must be completed:

- 1) ASN must be created in WBSCM;
- 2) Goods Receipt entered by the recipient agency representative; and
- 3) Invoice submitted in WBSCM with all supporting documents attached.

Payment is due after submission of a properly prepared invoice in WBSCM, with the required supporting documentation, within the time indicated below

<b>If the items delivered are:</b>	<b>Payment must be made as close as possible to but not later than:</b>
Processed frozen fruit and vegetable products. As defined in 31 U.S.C. 3902	10th day after product delivery
Processed canned fruit and vegetable products. As defined in 31 U.S.C. 3902	30th day after product delivery

For the purpose of payment, the date of delivery of each shipment of product will be the date of receipt in WBSCM of a properly documented invoice package and the Goods Receipt entered by recipient agency. In addition to the submission of the invoice package with supporting documents indicated above, the following action must be completed in WBSCM before payment will be made.

**Three way match – Delivery Order Item, Goods Receipt, and Invoice with supporting documentation attached.**

USDA payments must be made directly to a financial banking institution as listed in the Contractor’s System for Award Management (SAM.gov).

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**SECTION D – CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS**

**Proceed to the following page.**

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## D-1 EXHIBIT 1 – Commodity SPECIFICATIONS

The following USDA Commodity Specifications are applicable to identified materials for this contract.

Commodity Specification for Canned Vegetable, dated May 2017:

<https://www.ams.usda.gov/sites/default/files/media/CommoditySpecificationsforCannedVegetablesMay2017.pdf>

CANNED	
WBSCM Material	Material Description
100306	BEANS GREEN CAN-24/300
100307	BEANS GREEN CAN-6/10
100310	CORN CREAM STYLE CAN-24/300
100311	CORN WHOLE KERNEL CAN-24/300
100313	CORN WHOLE KERNEL(LIQ) CAN-6/10
100314	PEAS CAN-24/300
100315	PEAS CAN-6/10
100320	VEG MIX CAN-24/300
100328	TOMATO DICED CAN-24/300
100329	TOMATO DICED CAN-6/10
100331	POTATOES WHT SLICES CAN-24/300

Commodity Specification for Frozen Vegetables, dated June 2014:

<https://www.ams.usda.gov/sites/default/files/media/Commodity%20Specification%20for%20Frozen%20Vegetables%2C%20June%202014.pdf>;

Amendment No. 1, dated March 2015:

<https://www.ams.usda.gov/sites/default/files/media/Commodity%20Specification%20for%20Frozen%20Vegetables%2C%20Amendment%201%2C%20March%202015.pdf>;

Amendment No. 2, dated March 2015:

<https://www.ams.usda.gov/sites/default/files/media/Commodity%20Specification%20for%20Frozen%20Vegetables%2C%20Amendment%202%2C%20March%202015.pdf>;

Amendment No. 3, dated January 2016:

<https://www.ams.usda.gov/sites/default/files/media/Amendment%203%20Carrots%20sliced%20dia%20%201-13-16F%203-31-16.pdf>;

Amendment No. 04 dated January 2016:

<https://www.ams.usda.gov/sites/default/files/media/Amendment%204%20Vegetable%20Blends%20Swt%20Pepp%20and%20Onion%203-2-16%20Final.pdf>

Amendment No. 05 dated May 2016:

<https://www.ams.usda.gov/sites/default/files/media/Amendment%205%20Frz%20Peas%201-2-2.5%20lb.%205-24-16.pdf>.

Amendment No. 06 dated March 2017:

<https://www.ams.usda.gov/sites/default/files/media/FrozenVegetableAmendment6March2017.pdf>.

<b>FROZEN</b>	
<b>WBSCM Material</b>	<b>Material Description</b>
100348	CORN FRZ CTN-30 LB
100350	PEAS GREEN FRZ CTN-30 LB
100351	BEANS GREEN FRZ CTN-30 LB
100352	CARROTS FRZ CTN-30 LB
110763	PEAS GREEN FRZ 12/2.5 LB

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**D-2 EXHIBIT 2 – ESTIMATES BASED ON CURRENT ORDERS FOR CANNED AND FROZEN VEGETABLES**

**See attached spreadsheet titled Exhibit 2 – ESTIMATES BASED ON CURRENT ORDERS FOR CANNED AND FROZEN VEGETABLES**

There are 2 tabs on this spreadsheet for the National School Lunch Program (NSLP) and Household Programs.

- Tab 1 Titled – NSLP Demand Jan-June: shows orders currently in the system for January 2018 through September 2018 deliveries.
- Tab 2 Titled – Household Programs Demand: shows orders currently in the system for January 2018 through September 2018 deliveries.

**Note: These estimates are subject to change and are provided solely for informational purposes to assist with pricing.**

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**D-3 EXHIBIT 3 - DOMESTIC ORIGIN CERTIFICATION**

This form must be completed by an authorized company official or their designee for each contract/purchase order delivery awarded. The completed form must be presented to a representative of the USDA, Agricultural Marketing Service (AMS), certification agent at the processing facility; the completed form must also be presented to the USDA Contracting Officer or agent thereof upon request. *If imported product is brought into the facility during the production and shipment of product for this contract, it is the contractor’s responsibility to notify the applicable certification branch.* Each contractor and/or processing facility under this contract must have a copy of this form on file.

Solicitation Number: \_\_\_\_\_

Contract/Purchase Order Number: \_\_\_\_\_

Product: \_\_\_\_\_

Does your company process or handle products originating from sources other than the United States, its territories or possessions, Puerto Rico, or the Trust Territories of the Pacific Islands?

YES  NO If yes, attach a copy of your segregation plan explaining how such product is stored and processed separate from domestic product..

Do any of your Subcontractor/Suppliers process or handle products originating from sources other than the United States, its territories or possessions, Puerto Rico, or the Trust Territories of the Pacific Islands?

YES  NO If yes, attach a copy of each subcontractor’s/supplier’s segregation plan explaining how such product is stored and processed separate from domestic product.

I certify that all products sold to the Department of Agriculture are of 100 percent domestic origin and that all above statements are true. I further certify that traceability documentation will be made available to USDA, Agricultural Marketing Service representatives upon request. **WARNING: 18 U.S.C. Part 1, Chapter 47, Section 1001 states that “Except as otherwise provided in this section, whoever, in any manner within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or devise a material fact; (2) makes any materially false, fictitious or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.**

*Knowingly and willingly making false statements may also constitute a violation of the Perishable Agricultural Commodities Act (7 U.S.C., 499a-499t), and may result in monetary penalties or license suspension or revocation.*

Signature: \_\_\_\_\_  
Print and Sign Name (Only authorized signatures)

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

## D-4 EXHIBIT 4 - WBSCM MINIMUM SYSTEM REQUIREMENTS

Information on applicable WBSCM information and settings to be used can be found at the Website address: <https://www.ams.usda.gov/selling-food/wbscm>

If one needs WBSCM assistance, please send an e-mail to the [WBSCMAMSHelpDesk@ams.usda.gov](mailto:WBSCMAMSHelpDesk@ams.usda.gov) along with a screen shot of the issue, if applicable.

The site also contains instructions on submitting offers and invoices in WBSCM under the AMS Designated Laboratory Program section.

**Step-by-Step Procedures**

- Vendor Registration Form
- Frequently Asked Questions (PDF)
- Corporate Vendor Administrator Roles and Responsibilities (PDF)
- The Process Vendor Flow (PDF)
- AMS Long Procurement Number Description for Solicitations (PDF)
- WBSCM Public Procurement Site (Link)

**System Settings**

- System - Accessing for the First Time
- System - Recommended Configuration
- System - Verify IE Settings

**Creating Reports**

- New Purchase Order Item Report (pdf)
- Vendor Business Partner Report (pdf)
- ASN Report (pdf)
- Goods Receipt Report (pdf)
- List of Invoices (pdf)
- List of Purchase Orders (pdf)
- Print Multiple Purchase Orders (pdf)

**Pre-Award Processes: Submitting Offers**

- Export-Import Procedures (PDF)
- Release 3.4 Changes and Instructions (PDF)
- Submitting an Offer on IFB Solicitations (PDF)
- Submitting an Offer on Long-Term/RFP Solicitations (PDF)

**Post-Award Processes**

- Waiver Request - Instructions (PDF); Waiver Request Templates (Word)
- Printing a Purchase Order (PDF)
- Export Purchase Order to Excel (PDF)
- Advanced Shipment Notifications - Create Manually ASN (PDF)
- Advanced Shipment Notifications - Upload Multiple ASN (PDF)
- Multiple ASN Upload template (CSV)
- Create Invoice/Resubmit Procedures (PDF)
- Open Attachments on a PO (PDF)

**AMS Designated Laboratory Program (ADL)**

- Creating Invoice for ADL Vendors (PDF)
- Submitting Offers for ADL Vendors (PDF)

## D-5 EXHIBIT 5 - PAST PERFORMANCE REFERENCE INFORMATION

INSTRUCTIONS: Offerors **must** submit recent and relevant information concerning contracts and subcontracts (Federal, State, local government or private) which demonstrates their ability to perform the proposed effort. (One contract reference per form. Form may be duplicated):

Contract Number: \_\_\_\_\_

Contractor (Name, Address, Zip Code, Telephone number and Email Address):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Type of Contract: \_\_\_\_\_

Contract Dollar Value: \_\_\_\_\_

Date of Award: \_\_\_\_\_ Date Completed: \_\_\_\_\_

If not completed, provide status:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Type/Extent of Subcontracting:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Product/Service Description, Location & Relevancy of Work:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Percentage of Work Completed by your company: \_\_\_\_\_

Name, Address, Telephone Number and Email Address of Contact Reference Point of Contact and their position (Note: if using AMS CPS Contracts for past performance references, you may use the AMS Contracting Officer's contact information):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **D-6 EXHIBIT 6 - QUALIFICATION REQUIREMENTS FOR PROSPECTIVE CONTRACTORS SELLING COMMODITIES TO USDA MARCH 1 2017**

### **I. Introduction**

The USDA's Agricultural Marketing Service (AMS), Commodity Procurement Staff (CPS), procures U.S. origin agricultural commodities and products (USDA Foods) for use in domestic food distribution programs. USDA Foods procured are delivered to schools, food banks, and Indian Reservations, and at times are used in disaster relief. These procurements also support American agriculture by encouraging domestic consumption when prices are advantageous. These qualification requirements, as authorized under the Federal Acquisition Regulation (FAR), Subpart 9.2, Qualifications Requirements, are necessary for AMS to carry out its mission. A prospective contractor must be determined to be qualified by the Contracting Officer prior to submitting offers for AMS solicitations.

An interested prospective contractor may submit a qualification package at any time. Small businesses determined not to meet this qualification requirement, i.e., determined nonresponsible, will be referred to the Small Business Administration (SBA) for possible issuance of a Certificate of Competency (COC), in accordance with FAR subpart 19.6. Prospective contractors shall complete and provide all materials requested herein. The Contracting Officer will review the package, determine if a prospective contractor is qualified, and add approved vendors to the Qualified Bidders List (QBL). A prospective contractor will be notified whether requirements have been satisfied and when the qualification package has been approved. Offers will not be accepted from a prospective contractor that has failed to comply with these requirements. Access to the Web-Based Supply Chain Management (WBSCM) system for submission of offers shall be granted only to Qualified Bidders after the qualification process has been completed and approved by the Contracting Officer.

Procurement information, including the AMS Master Solicitation for Commodity Procurements, commodity specifications, procurement schedules, information on WBSCM, current solicitations, and historical contract award information, is located on the AMS website at:

<https://www.ams.usda.gov/selling-food>.

### **II. Qualification Requirements**

The following are required of each prospective contractor to complete the qualification requirements process:

#### **A. Administrative Requirements**

##### **1. System for Award Management (SAM).**

In accordance with FAR Part 4.1102, prospective contractors shall be registered in System for Award Management website. The contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain active in SAM, after the initial registration, the contractor is required to review and update their company information on an annual basis, from the date of initial registration or subsequent updates. Annually, companies need to assure that all information in the SAM database is current, accurate and complete. The SAM website is located at: <https://www.sam.gov/portal/public/SAM/>. There is no fee to register in SAM.

2. FDA, Food Facility Registration Number.

In accordance with the Food Safety Modernization Act of 2011 (FSMA), domestic facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States are required to register with the FDA and renew such registrations. If applicable, provide your FDA food facility registration number. FDA guidance is available at: <http://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/ucm2006831.htm>

3. SBA Certifications (if applicable).

Submit a copy of the applicable SBA certificate if the firm is a certified 8(a), HUBZone, etc.

4. Veteran's Administration (VA) Certification (if applicable).

If required by the contracting officer, submit a copy of the applicable certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB).

5. Web-Based Supply Chain Management (WBSCM) Registration Form.

USDA-AMS commodity procurements are conducted electronically through WBSCM computer system. Prospective contractor's must complete the WBSCM Vendor Registration Form available at:

<https://www.ams.usda.gov/resources/wscm-vendor-registration-form>

B. Responsible Prospective Contractor's Documentation (FAR 9.104-1 and 9.104-3)

1. Prospective contractors shall provide a written capabilities statement on company letterhead with a signature, providing the firm's exact legal name, and include the following:

- A description of historical business experiences including the number of years it has sold these or similar products in the commercial

marketplace or to governmental entities.

- A list of products that it is interested in providing (a copy of the WBSCM vendor registration form may be used).
- Any additional pertinent information regarding a prospective contractor's capabilities, such as, but not limited to, news articles, company websites, brochures, etc., and evidence of a satisfactory record of integrity and business ethics, and verification that it is otherwise qualified and eligible to receive an award under applicable laws and regulations.

2. Three reference letters from customers that demonstrate the prospective contractor is responsible. These letters must be from the customer, on company letterhead and signed by the customer's representative.

3. For Non-manufacturers only.

To demonstrate its capability to supply the products it wishes to bid on, nonmanufacturers must provide a copy of the written agreement in effect between itself and an approved supplier. The agreement must be on company letterhead and must be signed by both parties. If the nonmanufacturer has to change its supplier, a new written agreement between itself and the new supplier must be submitted for approval. Nonmanufacturers must also submit a complaint and dispute resolution proposal which details how the non-manufacturer will resolve any potential complaints or hindrances that may arise. If a non-manufacturer represents itself as a small business concern, it must comply with 13 CFR 121.406(b):

(b) Non-manufacturers. (1) A firm may qualify as a small business concern for a requirement to provide manufactured products or other supply items as a nonmanufacturer if it:

- (i) Does not exceed 500 employees;
- (ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied;
- (iii) Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and
- (iv) Will supply the end item of a small business manufacturer, processor or producer made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(5) of this section.

C. Financial Responsibility (FAR 9.104-1(a) and 9.104-3(a))

A prospective contractor shall demonstrate that it has adequate financial resources to perform the contract, or the ability to obtain them, including the availability of necessary working capital and satisfactory credit. The prospective contractor must provide its most current, complete comparative financial statement. The financial statement must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and be audited or reviewed by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants. At a minimum, the statement should include a balance sheet, profit and loss statement, statement of cash flows, statement of retained earnings and any notes to the financial statement. For

partnerships, the last fiscal year end or current financial statement of the partnership and the personal financial statement of each partner will be required. For individuals, financial statements that include all of his/her personal and business assets and liabilities will be required. Annual review of Financial Responsibility:  
Approved vendors added to AMS' Qualified Bidders List(s) that wish to remain on that list, and otherwise continue to meet qualification requirements, will be requested to submit an updated financial statement to AMS-CPS within 120 days of its fiscal year close to demonstrate current financial responsibility.

Failure to submit the required financial information may result in a non-responsibility determination and/or removal from the QBL.

#### D. Food Safety and Sanitation Requirements.

##### 1. Food Defense Requirements

All qualified contractors and subcontractors must have a documented and operational food defense plan that provides for the security of a plant's production processes and includes the storage and transportation of pre-production raw materials, other ingredients and post-production finished products. The plan shall address the following areas, where applicable: (1) food defense plan management; (2) outside and inside security of the production and storage facilities; (3) slaughter and processing, including all raw material sources; (4) controlled access to production and storage areas; (5) storage; (6) water and ice supply; (7) mail handling; (8) personnel security; and (9) transportation, shipping, and receiving (includes the sealing of any transport conveyance for truck lot and less-than-truck lot quantities of finished product).

The food defense plan must be audited by an AMS representative. Any nonconformance identified must be addressed in writing to both the Contracting Officer and Auditor. Contact the appropriate AMS Audit and Accreditation Program for information on food defense audit services. Contacts for each commodity area are found below and are also available on the AMS website at

<https://www.ams.usda.gov/services/auditing/apply>.

#### Fruits, Vegetables & Specialty Crops

To apply for fruit and vegetable auditing services, contact the SCI division, Audit Services Branch at:

Telephone: (202) 720-5021

Fax: (202) 260-8927

Email: [FVAudits@ams.usda.gov](mailto:FVAudits@ams.usda.gov)

#### Livestock, Poultry and Seed

To apply for Auditing Services, complete the Application for Service - LPS-109 form.

View our Quality Systems Verification Programs Regulation. The completed LPS Form 109 must be sent to the Quality Assessment Division along with the cover letter requesting service and a complete copy of the client's program documentation. These documents can be sent via email to [QAD.BusinessOps@ams.usda.gov](mailto:QAD.BusinessOps@ams.usda.gov) or to the address below.

USDA, AMS, LPS, QAD  
Business Operations Branch  
10809 Executive Center Drive  
Suite 318  
Little Rock, AR 72211  
Phone: (501) 312-2962  
Fax: (501) 312-2968  
Email: [QAD.BusinessOps@ams.usda.gov](mailto:QAD.BusinessOps@ams.usda.gov)

Dairy Plant Survey Program: For information on the Dairy Plant Survey Program, please visit this AMS website: <https://www.ams.usda.gov/services/auditing/dairy-plantsurvey-program>

For meat, fish, poultry, and egg products, reference the Food Safety and Inspection Service (FSIS) “Security Guidelines for Food Processors” at the following website: <http://www.fsis.usda.gov/OA/topics/SecurityGuide.pdf>. Information for the transportation and distribution of meat, poultry, and egg products is found at the following website <http://www.fsis.usda.gov/oa/topics/transportguide.htm>.

For fruits, vegetables, shell eggs, and other food products regulated by the Food and Drug Administration (FDA), reference FDA’s “Food Producers, Processors, and Transporters: Food Security Preventive Measures Guidance” dated October, 2007 at the following website:

<http://www.fda.gov/Food/FoodDefense/FoodSecurity/default.htm>.

For dairy, grain, and oilseed products see quality assurance requirements in commodity requirements documents at the following website:

<https://www.ams.usda.gov/selling-food/product-specs>.

## 2. Pre-Award Plant Surveys

After receiving the qualification information, a pre-award plant survey or capability assessment will be conducted to verify that a prospective contractor meets AMS qualification requirements. The pre-award survey/assessment will be conducted by the applicable USDA area, e.g., AMS Program Areas—Specialty Crop, Poultry, Livestock and Seed, Dairy or USDA’s Federal Grain Inspection Service (FGIS)—to evaluate technical, production, and transportation capabilities, and quality assurance and production control procedures of the contractor.



Specific pre-award plant survey/assessment requirements are referenced in the Supplement and/or Commodity Specification(s) applicable to the commodities the prospective contractor is interested in supplying. These documents can be found on the Commodity Purchasing website at

[www.ams.usda.gov/commoditypurchasing](http://www.ams.usda.gov/commoditypurchasing). For more information, contact the Commodity Procurement Staff at 202-720-4517.

#### E. Submitting a Vendor Qualification Package

A prospective contractor is encouraged to submit the qualification package as soon as possible to allow ample time for the processes and approval, and subsequent WBSCM registration prior to the closing date of the targeted solicitation. A checklist (Exhibit 1) is provided to assist the applicant with submission of a complete package.

Submit the qualification packages to:

Ms. Andrea Lang  
Small Business Coordinator  
Email address: [andrea.lang@ams.usda.gov](mailto:andrea.lang@ams.usda.gov).  
Telephone No.: 202-720-4237

#### NOTICE

Except as provided in FAR Part 24.2 (the “Freedom of Information Act”), qualification information, including the pre-award survey reports, accumulated for purposes of determining the responsibility of a prospective contractor, shall not be released or disclosed outside the government. All information provided will be kept confidential to the extent permitted by law.

Under penalty of perjury, each qualification package must be submitted and signed by an individual who has the legal authority to contractually bind a prospective contractor on whose behalf that information package is submitted. If any information provided by a prospective contractor becomes inaccurate, a prospective contractor must immediately notify the Contracting Officer and provide updated and accurate information in writing. AMS reserves the right to waive minor irregularities and omissions in the information obtained in the qualification package submitted.

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VENDOR QUALIFICATIONS REQUIREMENTS - ATTACHMENT 1- MARCH 2017

Print the following checklist and submit along with the completed application package.

Questions regarding vendor qualifications and approval should be directed to Ms. Andrea Lang at 202-720-4237.

• System for Award Management (SAM) <a href="http://www.sam.gov">www.sam.gov</a>	
• <b>Business Status.</b> As indicated in SAM, business status is one of the following:	
o Large Business	
o Small Business	
o Small Disadvantaged Business	
o Women-Owned Business	
o Veteran-Owned Business	
o Service-Disabled Veteran-Owned Business	
o HUBZone Business	
o 8(a) Small Business Development Concern	
• <b>Completed <a href="#">WBSCM Vendor Registration Form</a></b>	
• <b>Company Letter-</b> certifying capability to perform	
• <b>Three (3) Letters of Reference</b> from customers your company sold the same or similar products to	
• <b>Business Type.</b> Check one: <input type="checkbox"/> Manufacturer <input type="checkbox"/> Non-manufacturer	
• <b>Check one or more as applicable.</b> <input type="checkbox"/> Grower <input type="checkbox"/> Grower/Packer/Shipper <input type="checkbox"/> Processor <input type="checkbox"/> Distributor/Wholesaler <input type="checkbox"/> Broker	
• <b>Non-manufacturer SDVOSBs or 8(a)s ONLY</b> , the following requirements apply:	
o Letter from manufacturer/supplier stating it is willing to provide product that meets the USDA commodity specifications	
o Complaint and dispute resolution proposal	
• <b>Current Dun and Bradstreet Report</b> (Business Information Report)	
• <b>Most Recent Financial Statements</b>	

## SECTION E – SOLICITATION PROVISIONS

### E-1 FEDERAL ACQUISITION REGULATION PROVISIONS

#### E-1.1 52.209-11 Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law (FEB 2016)

(a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that—

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

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

(2) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

#### E-1.2 52.212-3 Offeror Representations and Certifications – Commercial Items (JAN 2017)

The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically via the System for Award Management (SAM) website located at <https://www.sam.gov/portal>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (u) of this provision.

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

“Administrative merits determination” means certain notices or findings of labor law violations issued by an enforcement agency following an investigation. An administrative merits determination may be final or be subject to appeal or further review. To determine whether a particular notice or finding is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

“Arbitral award or decision” means an arbitrator or arbitral panel determination that a labor law violation occurred, or that enjoined or restrained a violation of labor law. It includes an award or decision that is not final or is subject to being confirmed, modified, or vacated by a court, and includes an award or decision resulting from private or confidential proceedings. To determine whether a particular award or decision is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

“Civil judgment” means—

(1) In paragraph (h) of this provision: A judgment or finding of a civil offense by any court of competent jurisdiction.

(2) In paragraph (s) of this provision: Any judgment or order entered by any Federal or State court in which the court determined that a labor law violation occurred, or enjoined or restrained a violation of labor law. It includes a judgment or order that is not final or is subject to appeal. To determine whether a particular judgment or order is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

“DOL Guidance” means the Department of Labor (DOL) Guidance entitled: “Guidance for Executive Order 13673, ‘Fair Pay and Safe Workplaces’”. The DOL Guidance was initially published in the Federal Register on August 25, 2016, and significant revisions will be published for public comment in the *Federal Register*. The DOL Guidance and subsequent versions can be obtained from [www.dol.gov/fairpayandsafeworkplaces](http://www.dol.gov/fairpayandsafeworkplaces).

“Economically disadvantaged women-owned small business (EDWOSB) concern” 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 and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

“Enforcement agency” means any agency granted authority to enforce the Federal labor laws. It includes the enforcement components of DOL (Wage and Hour Division, Office of Federal Contract Compliance Programs, and Occupational Safety and Health Administration), the Equal Employment Opportunity Commission, the Occupational Safety and Health Review Commission, and the National Labor Relations Board. It also means a State agency designated to administer an OSHA-approved State Plan, but only to the extent that the State agency is acting in its capacity as administrator of such plan. It does not include other Federal agencies which, in their capacity as contracting agencies, conduct investigations of potential labor law violations. The enforcement agencies associated with each labor law under E.O. 13673 are—

(1) Department of Labor Wage and Hour Division (WHD) for—

(i) The Fair Labor Standards Act;

(ii) The Migrant and Seasonal Agricultural Worker Protection Act;

(iii) [40 U.S.C. chapter 31](#), subchapter IV, formerly known as the Davis-Bacon Act;

(iv) [41 U.S.C. chapter 67](#), formerly known as the Service Contract Act;

(v) The Family and Medical Leave Act; and

(vi) E.O. 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors);

(2) Department of Labor Occupational Safety and Health Administration (OSHA) for—

(i) The Occupational Safety and Health Act of 1970; and

(ii) OSHA-approved State Plans;

(3) Department of Labor Office of Federal Contract Compliance Programs (OFCCP) for—

(i) Section 503 of the Rehabilitation Act of 1973;

(ii) The Vietnam Era Veterans’ Readjustment Assistance Act of 1972 and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974; and

(iii) E.O. 11246 of September 24, 1965 (Equal Employment Opportunity);

(4) National Labor Relations Board (NLRB) for the National Labor Relations Act; and

(5) Equal Employment Opportunity Commission (EEOC) for—

(i) Title VII of the Civil Rights Act of 1964;

(ii) The Americans with Disabilities Act of 1990;

(iii) The Age Discrimination in Employment Act of 1967; and

(iv) Section 6(d) of the Fair Labor Standards Act (Equal Pay Act).

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

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

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

“Highest-level owner” means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

“Immediate owner” means an entity, other than the offeror, that has direct control of the offeror.

Indicators of control include, but are not limited to, one or more of the following: ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

“Inverted domestic corporation”, means a foreign incorporated entity that meets the definition of an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#).

“Labor compliance agreement” means an agreement entered into between a contractor or subcontractor and an enforcement agency to address appropriate remedial measures, compliance assistance, steps to resolve issues to increase compliance with the labor laws, or other related matters.

“Labor laws” means the following labor laws and E.O.s:

- (1) The Fair Labor Standards Act.
- (2) The Occupational Safety and Health Act (OSHA) of 1970.
- (3) The Migrant and Seasonal Agricultural Worker Protection Act.
- (4) The National Labor Relations Act.
- (5) [40 U.S.C. chapter 31](#), subchapter IV, formerly known as the Davis-Bacon Act.
- (6) [41 U.S.C. chapter 67](#), formerly known as the Service Contract Act.
- (7) E.O. 11246 of September 24, 1965 (Equal Employment Opportunity).
- (8) Section 503 of the Rehabilitation Act of 1973.
- (9) The Vietnam Era Veterans’ Readjustment Assistance Act of 1972 and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974.
- (10) The Family and Medical Leave Act.
- (11) Title VII of the Civil Rights Act of 1964.
- (12) The Americans with Disabilities Act of 1990.
- (13) The Age Discrimination in Employment Act of 1967.
- (14) E.O. 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors).
- (15) Equivalent State laws as defined in the DOL Guidance. (The only equivalent State laws implemented in the FAR are OSHA-approved State Plans, which can be found at [www.osha.gov/dcsp/osp/approved\\_state\\_plans.html](http://www.osha.gov/dcsp/osp/approved_state_plans.html)).

“Labor law decision” means an administrative merits determination, arbitral award or decision, or civil judgment, which resulted from a violation of one or more of the laws listed in the definition of “labor laws”.

“Manufactured end product” means any end product in product and service codes (PSCs) 1000-9999, except—

- (1) PSC 5510, Lumber and Related Basic Wood Materials;
- (2) Product or Service Group (PSG) 87, Agricultural Supplies;
- (3) PSG 88, Live Animals;
- (4) PSG 89, Subsistence;
- (5) PSC 9410, Crude Grades of Plant Materials;
- (6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) PSC 9610, Ores;

(9) PSC 9620, Minerals, Natural and Synthetic; and

(10) PSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

“Predecessor” means an entity that is replaced by a successor and includes any predecessors of the predecessor.

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

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

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

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

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

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

(6) Have been voluntarily suspended.

“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\(b\)\(3\)](#)).

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

(1) Means a small business concern—

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

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

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

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

“Small disadvantaged business concern”, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and  
(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

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

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

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

“Successor” means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term “successor” does not include new offices/divisions of the same company or a company that only changes its name. The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.

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

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

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

“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.

**Note to paragraph (a):** By a court order issued on October 24, 2016, the following definitions in this paragraph (a) are enjoined indefinitely as of the date of the order: “Administrative merits determination”, “Arbitral award or decision”, paragraph (2) of “Civil judgment”, “DOL Guidance”, “Enforcement agency”, “Labor compliance agreement”, “Labor laws”, and “Labor law decision”. The enjoined definitions will become effective immediately if the court terminates the injunction. At that time, GSA, DoD and NASA will publish a document in the *Federal Register* advising the public of the termination of the injunction.

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

(2) The offeror has completed the annual representations and certifications electronically via the SAM website accessed through <http://www.acquisition.gov>. After reviewing the SAM database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR [52.212-3](#), Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)), except for paragraphs \_\_\_\_\_.

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

*These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.*

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

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

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

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

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

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

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

(6) WOSB concern eligible under the WOSB Program. *[Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.]* The offeror represents that—

(i) It  is,  is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. *[The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.]* Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. *[Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.]* The offeror represents that—

(i) It  is,  is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. *[The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.]* Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.



**Note:** Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

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

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

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

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

(ii) It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture:\_\_\_\_\_.]

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

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

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

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

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

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

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

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

(e) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352).* (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

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

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components

of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Supplies.”

(2) Foreign End Products:

**Line Item No. Country of Origin**

Line Item No.	Country of Origin

[List as necessary]

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

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

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

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, 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**

Line Item No.	Country of Origin

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

**Line Item No. Country of Origin**

Line Item No.	Country of Origin

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[List as necessary]

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

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

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

Canadian End Products:

**Line Item No.**

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[List as necessary]

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

(g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

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

Canadian or Israeli End Products:

**Line Item No. Country of Origin**

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[List as necessary]

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

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, 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, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

**Line Item No. Country of Origin**

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[List as necessary]

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

(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

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

Other End Products:

**Line Item No. Country of Origin**

Line Item No.	Country of Origin

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#). For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American 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 such products are insufficient to fulfill the requirements of the solicitation.

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

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

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

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

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

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

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

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

(ii) *Examples.*

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

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS

determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

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

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

(i) Certification Regarding Knowledge of Child Labor for *Listed End Products (Executive Order 13126)*. [*The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).*]

(1) *Listed end products.*

**Listed End Product    Listed Countries of Origin**

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

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

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

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

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

(2)  Outside the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TIN: \_\_\_\_\_.

TIN has been applied for.

TIN is not required because:

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

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization*.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other \_\_\_\_\_.

(5) *Common parent.*

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

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

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

(n) *Prohibition on Contracting with Inverted Domestic Corporations.*

(1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at [9.108-2\(b\)](#) applies or the requirement is waived in accordance with the procedures at [9.108-4](#).

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

- (i) It  is,  is not an inverted domestic corporation; and
- (ii) It  is,  is not a subsidiary of an inverted domestic corporation.

(o) *Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.*

(1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(2) *Representation and Certifications.* Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

- (i) 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;
- (ii) 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; and
- (iii) 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 <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

- (i) This solicitation includes a trade agreements certification (*e.g.*, [52.212-3\(g\)](#) or a comparable agency provision); and
- (ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(p) *Ownership or Control of Offeror.* (Applies in all solicitations when there is a requirement to be registered in SAM or a requirement to have a unique entity identifier in the solicitation.)

(1) The Offeror represents that it  has or  does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (2) and if applicable, paragraph (3) of this provision for each participant in the joint venture.

(2) If the Offeror indicates “has” in paragraph (p)(1) of this provision, enter the following information:

Immediate owner CAGE code: \_\_\_\_\_.

Immediate owner legal name: \_\_\_\_\_.

(Do not use a “doing business as” name)

Is the immediate owner owned or controlled by another entity:  Yes or  No.

(3) If the Offeror indicates “yes” in paragraph (p)(2) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest-level owner CAGE code: \_\_\_\_\_.

Highest-level owner legal name: \_\_\_\_\_.

(Do not use a “doing business as” name)

(q) *Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.*

(1) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, The Government will not enter into a contract with any corporation that—

(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(2) The Offeror represents that—

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

(ii) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(r) *Predecessor of Offeror.* (Applies in all solicitations that include the provision at [52.204-16](#), Commercial and Government Entity Code Reporting.)

(1) The Offeror represents that it  is or  is not a successor to a predecessor that held a Federal contract or grant within the last three years.

(2) If the Offeror has indicated “is” in paragraph (r)(1) of this provision, enter the following information for all predecessors that held a Federal contract or grant within the last three years (if more than one predecessor, list in reverse chronological order):

Predecessor CAGE code: \_\_\_\_\_ (or mark “Unknown”)

Predecessor legal name: \_\_\_\_\_

(Do not use a “doing business as” name)

(s) *Representation regarding compliance with labor laws (Executive Order 13673).* If the offeror is a joint venture that is not itself a separate legal entity, each concern participating in the joint venture shall separately comply with the requirements of this provision.

(1)(i) For solicitations issued on or after October 25, 2016 through April 24, 2017: The Offeror  does  does not anticipate submitting an offer with an estimated contract value of greater than \$50 million.

(ii) For solicitations issued after April 24, 2017: The Offeror  does  does not anticipate submitting an offer with an estimated contract value of greater than \$500,000.

(2) If the Offeror checked “does” in paragraph (s)(1)(i) or (ii) of this provision, the Offeror represents to the best of the Offeror’s knowledge and belief [*Offeror to check appropriate block*]:



(i) There has been no administrative merits determination, arbitral award or decision, or civil judgment for any labor law violation(s) rendered against the offeror (see definitions in paragraph (a) of this section) during the period beginning on October 25, 2015 to the date of the offer, or for three years preceding the date of the offer, whichever period is shorter; or

(ii) There has been an administrative merits determination, arbitral award or decision, or civil judgment for any labor law violation(s) rendered against the Offeror during the period beginning on October 25, 2015 to the date of the offer, or for three years preceding the date of the offer, whichever period is shorter.

(3)(i) If the box at paragraph (s)(2)(ii) of this provision is checked and the Contracting Officer has initiated a responsibility determination and has requested additional information, the Offeror shall provide—

(A) The following information for each disclosed labor law decision in the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov), unless the information is already current, accurate, and complete in SAM. This information will be publicly available in the Federal Awardee Performance and Integrity Information System (FAPIIS):

(1) The labor law violated.

(2) The case number, inspection number, charge number, docket number, or other unique identification number.

(3) The date rendered.

(4) The name of the court, arbitrator(s), agency, board, or commission that rendered the determination or decision;

(B) The administrative merits determination, arbitral award or decision, or civil judgment document, to the Contracting Officer, if the Contracting Officer requires it;

(C) In SAM, such additional information as the Offeror deems necessary to demonstrate its responsibility, including mitigating factors and remedial measures such as offeror actions taken to address the violations, labor compliance agreements, and other steps taken to achieve compliance with labor laws. Offerors may provide explanatory text and upload documents. This information will not be made public unless the contractor determines that it wants the information to be made public; and

(D) The information in paragraphs (s)(3)(i)(A) and (s)(3)(i)(C) of this provision to the Contracting Officer, if the Offeror meets an exception to SAM registration (see FAR [4.1102\(a\)](#)).

(ii)(A) The Contracting Officer will consider all information provided under (s)(3)(i) of this provision as part of making a responsibility determination.

(B) A representation that any labor law decision(s) were rendered against the Offeror will not necessarily result in withholding of an award under this solicitation. Failure of the Offeror to furnish a representation or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(C) The representation in paragraph (s)(2) 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 representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation in accordance with the procedures set forth in FAR [12.403](#).

(4) The Offeror shall provide immediate written notice to the Contracting Officer if at any time prior to contract award the Offeror learns that its representation at paragraph (s)(2) of this provision is no longer accurate.

(5) The representation in paragraph (s)(2) of this provision will be public information in the Federal Awardee Performance and Integrity Information System (FAPIIS).

**Note to paragraph (s):** By a court order issued on October 24, 2016, this paragraph (s) is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if

the court terminates the injunction. At that time, GSA, DoD and NASA will publish a document in the *Federal Register* advising the public of the termination of the injunction.

(t) *Public Disclosure of Greenhouse Gas Emissions and Reduction Goals*. Applies in all solicitations that require offerors to register in SAM (52.212-1(k)).

(1) This representation shall be completed if the Offeror received \$7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.

(2) *Representation*. [Offeror to check applicable block(s) in paragraph (t)(2)(i) and (ii)].

(i) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose greenhouse gas emissions, *i.e.*, makes available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(ii) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose a quantitative greenhouse gas emissions reduction goal, *i.e.*, make available on a publicly accessible website a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible website includes the Offeror's own website or a recognized, third-party greenhouse gas emissions reporting program.

(3) If the Offeror checked "does" in paragraphs (t)(2)(i) or (t)(2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible website(s) where greenhouse gas emissions and/or reduction goals are reported:\_\_\_\_\_.

(u)(1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The prohibition in paragraph (u)(1) of this provision does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(3) *Representation*. By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (*e.g.*, agency Office of the Inspector General).

### **E-1.3 52.215-6 Place of Performance (OCT 1997)**

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation,  intends,  does not intend [check applicable block] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks “intends” in paragraph (a) of this provision, it shall insert in the following spaces the required information:

PLACE OF PERFORMANCE (STREET  
ADDRESS, CITY, STATE, COUNTY, ZIP  
CODE)

NAME AND ADDRESS OF OWNER AND OPERATOR OF THE  
PLANT OR FACILITY IF OTHER THAN OFFEROR OR  
RESPONDENT

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

#### **E-1.4 52.216-1 Type of Contract (APR 1984)**

The Government contemplates award of a firm-fixed-price, indefinite-delivery/indefinite quantity contract resulting from this solicitation.

#### **E-1.5 52.233-2 Service of Protest (SEPT 2006)**

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulations, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from USDA/AMS Commodity Procurement Division, 1400 Independence Ave, SW, Stop 0239; Washington, DC 20250-0239.

(b) The copy of any protest shall be received in the office designated above within 1 day of filing a protest with the GAO.

(End of provision)

### **E-2 AGENCY SPECIFIC PROVISIONS**

#### **E-2.1 Instructions to Offerors**

**Pursuant to Federal Acquisition Regulation 12.302(a), the provision at 52.212-1, Instructions to Offerors—Commercial Items, is hereby tailored. The provision as published is replace with the following language—**

The offeror **shall** submit proposals in four parts: Part 1 - Compliance, Part 2 – Management of Workforce Practices and Policies, Part 3 – Past Performance, and Part 4 - Price. The format for each proposal part is described below. **Offerors shall submit all four parts to be eligible for award.** Each part should be separate and complete within itself.

Note: Parts 1, 2, 3, and 4, must be submitted via WBSCM either as attachments or as part of the WBSCM offer form.

## **Non-price Factors**

### **Part 1 – Compliance**

The offeror shall identify the primary plant and shipping point to be used for their offer, in WBSCM. If the offeror intends to use one or more plants or facilities located at a different address from the address indicated in their WBSCM offer, the offeror **shall** list all the processing plants and shipping points that it intends to use and **upload** them in a PDF formatted document or an excel spreadsheet, as an attachment in WBSCM. If the offeror does not submit any additional plants, all products ordered must come from the primary plant identified by the offeror in their WBSCM offer. **Food Defense Audit and Plant PSA Survey must be completed prior to proposal due date.**

Compliance will be determined by AMS through verification that: 1) the offeror has complied with the qualification requirements (See Exhibit 6 – Vendor Qualification Requirements March 2017); 2) the contractor has completed all WBSCM (Web Based Supply Chain Management) requirements and is a current user of WBSCM (inquiries concerning WBSCM access can be addressed by sending an email to [wbscmamshelpdesk@ams.usda.gov](mailto:wbscmamshelpdesk@ams.usda.gov)); and 3) at least one processing plant and shipping point to be used are in compliance with USDA audit requirements prior to proposal due date. Offerors will have the opportunity to add additional compliant plants and shipping points during performance.

### **Part 2 – Management of Workforce Practices and Policies**

Offerors **shall upload** a document to describe management strategies and control procedures to be used in achieving performance under the contract, such as the management of any subcontractors, strategies to manage risk, and management support and participation in implementation of procedures; specific technical skills to be employed on a full-time, part-time, interim, or temporary basis; plans for initial and on-going training of contractor and subcontractor personnel to ensure tendering of supplies that meet contract requirements; plans for on-going coordination of security clearances, whenever applicable; and the efficacy of policies and procedures in place for the recruitment, development, and retention of a safe, qualified, and diverse workforce.

### **Part 3 – Past Performance**

Three references **must** be uploaded in WBSCM which contain the information outlined in **Exhibit 5 - Past Performance Reference Information**. In order of preference to AMS, offerors may submit references for contracts performed for AMS for the same or similar products, any contracts performed for AMS, contracts performed for another Government agency for the same or similar products, contracts performed for any organization for the same or similar products, and any contracts performed that indicate the capability of the company to successfully meet the terms and conditions of the contract.

## **Price Factor**

Offerors **shall** propose pricing information as specified in Section B-1.

Constraints: Offerors should also indicate the maximum amount of product they are capable of producing during the identified delivery periods.

**QUESTIONS regarding this RFP are due on or before 11:00 am Central Time, on Wednesday, May 31, 2017,** via email, to Colleen Nicholson, [colleen.nicholson@ams.usda.gov](mailto:colleen.nicholson@ams.usda.gov) with “Questions concerning Solicitation 2000004733 Canned & Frozen Vegetable IDIQ” in the subject line. Vendor are required to submit all questions no later than the deadline specified above. **AMS provides no guarantee that untimely questions will be answered.** Answers to questions will be issued in writing via an amendment to the solicitation.

A **CONFERENCE CALL** discussing this RFP will be held on **Thursday, June 01, 2017, at 11:00 am Central Time** (12:00 am Eastern Standard Time). The Call-in number is **(888) 844-9904**; Access code is **1693356#**.

**OFFER DUE DATE:** PROPOSALS are due no later than **01:00 pm Central Time, Monday June 12, 2017.**

**SUBMISSION OF OFFERS:**

A **Proposal Submission Checklist** has been included on page 2 of this document to assist Offerors in ensuring all submission requirements are met.

Offers must submit the following by the Offer Due Date and Time:

- A complete and signed copy of Form SF1449 (See Section A) uploaded in portable document file format (PDF) in WBSCM;
- Acknowledgement of all amendments issued as specified in Block 11 of the amendment form (SF-30), uploaded in PDF format into WBSCM;
- Non-price factors, including Part 1 – Compliance, uploaded in PDF format into WBSCM;
- Part 2 – Management of Workforce Practices and Policies, uploaded in PDF format into WBSCM;
- Part 3 – Past Performance, uploaded in PDF format into WBSCM;
- Price factor, Part 4 - Prices and Constraints entered directly into WBSCM.

**The required subcontracting plan shall be submitted by large firms within 30 days of contract award.**

**CONTRACT AWARD:**

A notice of award will be issued in the form of a Product Commodity Award (PCA) Report or other public notice.

After award information is posted, inquiries may be made to the Contracting Officer.

Award(s), as specified above, will result in a binding contract without further action by either party. Information on awards is also available electronically through the commodity procurement website at <http://www.ams.usda.gov> under the “Commodity Purchasing” link after award and the PCA report posted on the WBSCM Public Procurement Page.

(End of Provision)

## **E-2.2 Evaluation Criteria**

**Pursuant to Federal Acquisition Regulation 12.302(d), the provision at 52.212-2, Evaluation—Commercial Items, is hereby tailored.**

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

**The Government intends to award to the Lowest Price Technically Acceptable offeror.**

The offeror shall meet all of the following non-price sub-factors to be determined technically acceptable. The offeror shall adequately demonstrate in writing that it meets each of the following requirements. The offeror shall provide in its proposal a clear written demonstration for each non-price sub-factor. The offeror shall begin the written demonstration or narrative for each of the three non-price sub-factors, parts, with the appropriate heading, i.e., compliance, management of workforce practices and policies, and past performance.

### **Non-price Factors**

**Part 1 – Compliance** – The offeror shall evidence and demonstrate that it meets the following compliance requirements—

(1) Qualification Requirements for Prospective Contractors Selling Commodities to USDA (MARCH 2017) outline in [Exhibit 6](#);

(2) Registered as an approved user of Web-Based Supply Chain Management (WBSCM).

Follow the “Step-by-Step Procedures” on AMS’s website for registration—

<https://www.ams.usda.gov/selling-food/wbscm>. Use the “Checklist for Vendors” form under that heading as a guide. The WBSCM helpdesk is available for questions and to provide assistance through the process—[WBSCMAMSHelpDesk@ams.usda.gov](mailto:WBSCMAMSHelpDesk@ams.usda.gov). Also, refer to [EXHIBIT 4 - WBSCM MINIMUM SYSTEM REQUIREMENTS](#) in Section D of this solicitation; and

(3) Receive approval for at least one processing plant and shipping point pursuant to USDA requirements. These locations are not necessarily the same, but may be. Each location requires a separate inspection certificate. The offeror must meet all Food Safety and Sanitation Requirements, including the Food Defense Requirements. The offeror must undergo Pre-Award Plant Surveys and receive compliance certificates for each facility handling commodities for which they intend to submit proposals. Refer to the New Vendor Qualification Requirements form under “Selling Food to USDA [-] Becoming an Approved Vendor,” at <https://www.ams.usda.gov/selling-food/becoming-approved>. Click on “New Vendor Qualification Requirements (pdf)” under Step 5.

**Part 2 – Management of Workforce Practices and Policies** – The offeror must provide a statement affirming that it has established and complies with the following management of workforce approach—

The offeror maintains a diverse and skilled workforce operating in a safe workplace environment. The offeror’s approach to workforce and workplace management is focused on diversity, quality, occupational safety, and efficiency and effectiveness in practices.

**Part 3 – Past Performance** – The offer shall meet the following past performance requirements. Offeror’s past performance over the past 12 months (24 months for requirement 3b) have met the following standards—

- (1) **Quality of Product:** Offeror delivered products that met USDA specifications or otherwise received appropriate waivers;
- (2) **Timeliness of Delivery:** Offeror delivered products on time for no less than 70% of deliveries;
- (3) **Business Relations/Problem Resolution:** (a) Offeror consistently maintained appropriate communications with the Commodity Procurement Staff, and (b) Offeror has no terminations for Cause or Default in the past two years;
- (4) **Timely Submission of Subcontracting Plans (large businesses only):** Offeror consistently complied with the submission requirements for subcontracting plans as required by FAR Subpart 19.7.

### **Price Factor**

AMS evaluates price using the Bid Evaluation Optimization Solution (BEOS) System. BEOS applies a strategic algorithm that considers price and delivery constraints across materials and plants. BEOS weighs costs and product availability for required delivery dates to determine the lowest cost scenario that meets the Government’s needs. We intend to evaluate proposed pricing using estimates based on current orders for canned and frozen vegetables, as shown in Exhibit 2.

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

**(End of Provision)**

**[End of Document]**