AMS Master Solicitation for Commodity Procurement

– Domestic Programs (MSCP-D)

for Domestic Food Distribution Program Purchases

Commercial Item, Sealed Bidding

Effective: October 1, 2019

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

An Equal Opportunity Provider and Employer

MSCP-D Updates included in this version, (i.e., changes from the August 2, 2019 version)

General Updates		
Page	**Text**	**Change**
8	"This version of the Master Solicitation incorporates FAR provisions and clauses in effect through _____"	Updated from FAC 2019-03 to **FAC 2019-06**.

Contract Clauses Updated		
Clause Number	**Clause Name**	**Change**
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights. (Apr 2014)	Added clause prescribed by FAR 3.908-8 for all solicitations and contracts that exceed the simplified acquisition threshold.
4A52.204-2	Use of Electronic Data Interchange (EDI)	Added new clause regarding the use of EDI.
4A52.211-3	Regulatory Requirements for Commodities and Packaging	Added paragraph (c) regarding country of origin labeling for **packaging**.
4A52.211-6	Unitization Requirements	Added a new local clause regarding unitization and palletization.
52.211-11	Liquidated Damages—Supplies, Services, or Research and Development	Updated paragraph (b) and (c) to commercial item clause language found in 52.212-4 paragraphs (f) and (m).
52.212-4	Contract Terms and Conditions—Commercial Items (Oct 2018)	Typo in paragraph (v); corrected "reference."
52.212-5	Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items	▪ Updated the clause to the latest provided by FAR dated September 30, 2019. ▪ Checked paragraph 12 (i) to include 52.219-4, *Notice of Price Evaluation Preference for HUBZone Small Business Concerns.*
4A52.232-3	Electronic Invoicing	Changed wording in paragraph (3) from "working" to "calendar" days to match FNS Instruction on the "Shipment and Receipt of USDA Foods" 709-5.
4A52.246-2	Food Defense Requirements	Updated the clause, paragraph (a), to specify that the food defense plan(s) should be in place "at the time of bid opening/proposal due date as specified in the solicitation." Updated the clause, paragraph (b), to specify that all nonconformances resulting from USDA's review and approval of plan(s) must be addressed in writing within 14 days to the "Quality Assessment Division prior to the bid opening date of the solicitation." For fruit and vegetable products, nonconformance(s) must be addressed with Specialty Crops Inspection/Food Safety and Inspection Service prior to the bid opening date of the solicitation.

4A52.247-3	Bill of Lading Notations	Added a new local clause regarding Bill of Lading notations.

Solicitation Provisions Updated		
Provision Number	**Provision Name**	**Change**
52.204-7	System for Award Management (Oct 2018)	Typo in paragraph (d); corrected “www.sam.gov”
52.212-3	Offeror Representations and Certifications—Commercial Items (OCT 2018)	Updated typos; for example, “accessed through” instead of “located at.”
4A52.214-1	Electronic Submission of Bids	Updated from FSA to AMS links.

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AMS Master Solicitation for Commodity Procurements
for Domestic Food Distribution Programs Purchases
Using Commercial Item, Sealed Bidding

I. GENERAL INFORMATION

This Master Solicitation for Commodity Procurements–Domestic Programs (MSCP-D, or "Master Solicitation"), is used by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), to provide contract clauses and solicitation provisions applicable to the solicitation of bids and award of contracts for various commodities for use in domestic food distribution programs, such as the National School Lunch Program, Commodity Supplemental Food Program, Food Distribution Program on Indian Reservations, and The Emergency Food Assistance programs. The Master Solicitation also provides general guidance to potential bidders and/or offerors.

USDA will periodically issue solicitations under this Master Solicitation to purchase agricultural commodities and the products thereof (USDA Foods) for distribution through domestic food distribution programs. USDA Foods under this contract must be a product of the United States (see clause 4A52.225-1 U.S. Origin Product). Specifications and program requirements are further defined in the appropriate commodity specification and/or supplement and are incorporated herein.

The Master Solicitation is updated as necessary to incorporate changes in the Federal Acquisition Regulation (FAR), Agricultural Acquisition Regulations (AGAR), and AMS policies and procedures. Bidders should not assume that a copy of the Master Solicitation, once downloaded for a particular IFB will be applicable for subsequent IFBs. The effective date at the top of the Master Solicitation document governs which version of the Master Solicitation is applicable to particular solicitation/invitations for bids (IFB).

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

Offerors are advised to carefully read this Master Solicitation, the applicable IFB, and the applicable commodity specification/requirements and/or supplement. Failure to do so will be at the offeror's risk. These documents are incorporated into the contract. Offerors are cautioned that statements made by Government personnel other than the Contracting Officer are not binding on the Government unless confirmed in writing by the Contracting Officer.

Offer prices will be either f.o.b. (or f.a.s. vessel) at the destinations listed in the applicable IFB or on a shipping point basis. If f.o.b. destination, bids will be invited on a purchase unit basis or multiples thereof, except that from time to time the IFB will indicate two or more destinations in a line item which will require a split delivery (drop) at each destination. Delivery by either trucks or railcars is at the option of the Contractor except for those destinations which specify the method of delivery. If f.o.b. origin, delivery of the commodity will be made either f.o.b. railroad cars or trucks or in-store at USDA's option, at the shipping points named in the IFB.

To submit bids, a company must be approved by the Contracting Officer as meeting vendor qualification requirements. For information regarding how to become a qualified bidder, visit http://www.ams.usda.gov/commoditypurchasing, or contact the Contracting Officer.

Offers, modifications, and withdrawals shall be submitted electronically via the Web Based Supply Chain Management Computer System (WBSCM). Submission of the aforementioned by any means other than WBSCM will be deemed nonresponsive. WBSCM is available online at: https://portal.wbscm.usda.gov/. See provision 4A52.214-1

This version of the Master Solicitation incorporates
FAR provisions and clauses in effect through FAC 2019-06.

II. CONTRACT CLAUSES

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

A. 52.212-4 Contract Terms and Conditions—Commercial Items (Oct 2018)

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

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

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

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

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

(d) *Disputes*. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

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

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

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

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

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

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

(vii) Name and address of official to whom payment is to be sent;
(viii) Name, title, and phone number of person to notify in event of defective invoice; and
(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
(x) Electronic funds transfer (EFT) banking information.
(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.
(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C.3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part1315.

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

(i) Payment.-

(1) *Items accepted*. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.
(2) *Prompt payment*. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903) and prompt payment regulations at 5 CFR Part1315.
(3) *Electronic Funds Transfer (EFT)*. If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.
(4) *Discount*. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
(5) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-
(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-
(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
(B) Affected contract number and delivery order number, if applicable;
(C) Affected line item or subline item, if applicable; and
(D) Contractor point of contact.
(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.
(6) *Interest*.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.
(iii) *Final decisions*. The Contracting Officer will issue a final decision as required by 33.211 if–
(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;
(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).
(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.
(v) Amounts shall be due at the earliest of the following dates:
(A) The date fixed under this contract.
(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.
(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-
(A) The date on which the designated office receives payment from the Contractor;
(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.
(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss*. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:
(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes*. The contract price includes all applicable Federal, State, and local taxes and duties.
(l) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the

Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

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

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

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

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

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

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

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

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) [Reserved]

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

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

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

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

B. ADDENDA TO 52.212-4

(a) Inspection/Acceptance – 52.212-4 Addendum.

(1) *Inspection.* The Government reserves the right to perform quality assurance at source; source includes, but is not limited to, contractor's manufacturing facility, packaging facility, warehouse, in-house laboratory, subcontractor's facilities, etc.

(2) *Acceptance.* Formal acceptance shall occur when the Government approves the invoice for payment.

(c) Changes – 52.212-4 Addendum.

The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Method of shipment or packing.

(2) Place of delivery.

(3) Time of delivery.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract, unless the contract terms provide for regional delivery pricing that covers cost adjustments. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Definitions – 52.212-4 Addendum.

(1) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

(A) The solicitation, or amended solicitation, provides a different definition;

(B) The contracting parties agree to a different definition;

(C) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or

(D) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(2) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at http://www.acquisition.gov/far at the end of the FAR, after the FAR Appendix.

(3) Definitions applicable to this solicitation—

"Agricultural Commodity" or "USDA Food" means a product grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients (See AGAR 470.103(b)). Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise: (1) produced in the United States; and (2) commercially available in the United States at fair and reasonable prices from domestic sources. See clause 4A52.225-1, *U.S. Origin Product.*

"Commercial item" means

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and-

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph(1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs(1) or (2) of this definition, but for-

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

"Commercially available off-the-shelf (COTS) item" means any item of supply that is–

(i) A commercial item (as defined in paragraph (1) of the definition in this section);

(ii) Sold in substantial quantities in the commercial (retail) marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.

"United States" includes the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands.

"WBSCM" means USDA's Web Based Supply Chain Management system which shall be used by the contractor and the Government for applicable contract transactions, as determined by the Government. USDA will provide the system at no charge for appropriate use by the contractor. WBSCM terminology, requirements, and processes shall automatically apply to the contract, as

applicable. In the event of a conflict between WBSCM and FAR/AGAR terminology, FAR/AGAR terminology shall take precedence.

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

(4) Definitions for use with FAR Clause 52.225-5, Trade Agreements incorporated by reference in FAR clause 52.212-5. Note Trade Agreements only apply to packaging and container components, not agricultural commodities and their product.

"Least developed country" means any of the following countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia.

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

"World Trade Organization Government Procurement Agreement (WTO GPA) country" means any of the following countries: Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom.

(f) Excusable delays – 52.212-4 Addendum.

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

(o) Warranty – 52.212-4 Addendum.

(1) Liability for Losses 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 specifications, if such replacement is agreed to by USDA.

(2) Liability for Losses Due to Product Recalled for Health or Safety Risk

In the event the commodity or 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.

(s) Order of Precedence – 52.212.4 Addendum

Contracts issued pursuant to this Master Solicitation also incorporate the following documents as part of the contract: the applicable solicitation; the applicable commodity specification and/or supplement; the Contractor's offer; and the contract/WBSCM Purchase Order. If the contract documents are inconsistent or contradictory, the following order of precedence will prevail giving precedence in the following order:

(1) Solicitation,
(2) Master Solicitation,
(3) Commodity Specification and/or Supplement,
(4) Other documents, exhibits, and attachments.

C. ADDITIONAL CLAUSES

4A52.201-1 Contracting Officer Representative

The Contracting Officer may designate a Contracting Officer's Representatives (CORs) to assist in the technical monitoring or administration of contracts awarded as a result of this solicitation.

(End of clause)

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

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

(End of clause)

52.204-13 System for Award Management Maintenance. (Oct 2018)

(a) Definitions. As used in this clause—

"Electronic Funds Transfer (EFT) indicator" means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

"Registered in the System for Award Management (SAM)" means that–

(1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into SAM;
(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;
(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
(4) The Government has marked the record "Active".

"System for Award Management (SAM)" means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes–
(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and
(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

"Unique entity identifier" means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision 52.204-7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.
(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
(d)

(1)

(i) If a Contractor has legally changed its business name or "doing business as" name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

(A) Change the name in SAM;
(B) Comply with the requirements of subpart 42.12 of the FAR; and
(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated

in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at www.sam.gov for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at www.sam.gov.

(End of clause)

4A52.204-1 Contract Closeout and Past Performance Evaluation

(a) Closeout Reporting. Contractors shall fully complete and return all documents relating to contract completion and contract closeout. Completion and return of the aforementioned documents may be reported as part of vendor past performance evaluation.

(b) Past Performance Evaluation. The Government will prepare a past performance evaluation at the time the work under this contact and/or delivery order is completed. Evaluations will rate performance several areas (e.g. quality of product or service, cost control, timeliness of performance, business relations, and, when applicable, performance against, and efforts to achieve the goals identified in the small business subcontracting plan). Contractors will have an opportunity to comment on the Government evaluation. The past performance evaluation may be used by the Government to support a future award decision. Details on use of contractor performance assessment reporting system will be provided at a future date.

(End of clause)

4A52.204-2 Use of Electronic Data Interchange (EDI) (Sept 2019)

(a) In the event that Electronic Data Interchange (EDI) functionality is utilized to facilitate electronic transactions between USDA and its contractors, it is the sole responsibility of the Contractor to ensure accuracy of electronically transferred data. The Government's WBSCM System shall serve as the system of record for all data exchanged.

(b) The Government shall not be liable to the Contractor for any delay or failure associated with EDI The Contractor's use of this service is at the Contractor's sole risk. The services are provided on an "as is" and "as available" basis. The Contractor shall be responsible for all fees associated with EDI. The Contractor is responsible for the confidentiality and security of its systems and any documents that the customer receives from The Government pursuant to the contract.

(c) The Government reserves the right to restrict, refuse, or cancel any participation in EDI services.

52.209-1 Qualification Requirements (Feb 1995)

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

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item

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

USDA, AMS Commodity Procurement Program
Andrea Lang, New Vendor/Small Business Coordinator
NewVendor@ams.usda.gov
202-720-4237
https://www.ams.usda.gov/selling-food/becoming-approved

(c) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(d) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government's interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.

(e) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

52.211-11 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 per calendar day of delay, not to exceed 45 days of delay, at the following rates:

Commodity	**Rate**	**Per Net Weight**
Animal Slaughtering (except Poultry) (Fine Ground/Coarse Ground Beef/Beef Patties/Pork Products) Canned Dried Beans / Canned Fruit / Canned Juice / Canned Vegetables Canning, Specialty (Canned Beef Chili without the beans/Beef Stew) Chicken Products / Chicken Bulk / Turkey Products Corn Syrup Dehydrated Products, Dried Fruit Dry Beans / Legumes Eggs Products Frozen Fruit/ Frozen Juice/ Frozen Vegetables Nuts, Roasted Peanuts, Raw Shelled Perishable Prepared Food Manufacturing (Fresh Fruits and Vegetables, Fresh Sliced Apples, Baby Carrots, etc.)	$0.0025	Lb/day

Seafood Products Preparation and Packaging (Fresh and Frozen Seafood)		
Bakery Flour Products Bakery Flour Mix Corn Products Wheat Flour Whole Wheat Pancakes Whole Wheat Tortillas	$ 0.15	Cwt/day
Rice Products Wild Rice	$ 0.20	Cwt/day
Crackers (Saltine) Instant Rice Baby Cereal Pasta Product **Macaroni and Cheese**	$ 0.30	Cwt/day
Processed Cereal Products Vegetable Oil Products	$ 0.35	Cwt/day
Cheese (Bulk) Cheese (Processed) Evaporated Milk Fortified R-T-E Cereals Infant Formula Instant Nonfat Dry Milk Mozzarella Cheese Non-fortified Nonfat Dry Milk Non-fortified Nonfat Dry Milk-Export Peanut Products Sunflower Seed Butter Ultra High Temperature Milk Yogurt	$ 0.45	Cwt/day

(b) If the Government terminates this contract in whole or in part under 52.212-4 paragraph (m) *Termination for cause*, 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 52.212-4 paragraph (f) *Excusable delays* in this contract.

(End of clause)

52.211-16 Variation in Quantity (Apr 1984)

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

(b) The permissible variation shall be limited to:

Zero Percent increase

Zero Percent decrease; unless otherwise revised by the specifications.

This increase or decrease shall apply to the Delivery Order (WBSCM Purchase Order) item quantity (i.e. net weight).

(End of clause)

452.211-73 Attachments to Specifications (Feb 1988)

Specifications listed in Part III, "Contract Documents, Exhibits, and Attachments," are hereby made part of this solicitation and any resultant contract.

(End of Clause)

452.211-74 Period of Performance (Feb 1988)

The base period of performance of this contract is from the earliest delivery date required in the schedule of supplies through the latest delivery date required in the schedule of supplies.

(End of Clause)

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

The effective period of this contract is from contract award date through final invoice payment date.

(End of Clause)

4A52.211-1 Delivery Instructions

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

(End of clause)

4A52.211-2 Advance Shipment Notice (ASN) and Unloading Appointment

(a) Contractor shall enter a WBSCM advanced shipment notice (ASN) on or before the date of shipment. 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. Advanced shipment notices shall contain:

- Shipper's name
- Commodity
- Sales Order or Requisition Number (SO or RN)
- Units per (SO or RN)
- Destination
- Purchase Order Number
- Ship date
- Mode of transportation. If truck, anticipated date of arrival.

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

(b) The creation of the ASN does not relieve the Contractor or subcontractor of their responsibility to obtain an unloading appointment.

(c) Appointments are required for all deliveries.

(d) Delivery appointments shall be made as far in advance of expected delivery as possible, but not less than **72 hours** prior to delivery by contacting a responsible representative at the applicable Purchase Order Item's Ship-to-Address for an unload appointment. Reference the Purchase Order (PO) Number, PO Item Number, and when provided, the Sales Order (SO) Number and SO Item Number for which the appointment is being scheduled. Ramifications of failure to schedule an appointment or failure to arrive on time for an appointment are the full responsibility of the contractor

(e) The Contractor may deliver early if the recipient agency agrees to accept early delivery, there is no additional cost to the Government, and upon AMS personnel being available to perform any necessary check loading and acceptance requirements, if applicable.

(End of clause)

4A52.211-3 Regulatory Requirements for Commodities and Packaging (Sept 2019)

(a) The commodity shall conform to the applicable provisions of the "Federal Food, Drug, and Cosmetic Act" (21 U.S.C. 301 et. seq.), as amended, and the relevant regulations, **including applicable Food Safety Modernization Act regulations (FSMA), and sections in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act).** The contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations related to its performance under this contract.

(b) All containers and packaging materials shall be constructed to meet the requirements of the Food and Drug Administration (FDA) for safe contact with the packaged product. The contractor shall obtain and maintain documentation from the container or packaging material manufacturer to verify that the containers and packaging materials used in the contract were in compliance with the Government's regulatory requirements for safe contact with food products.

(c) If the contractor purchases packaging and container ingredients from a foreign country and/or the package and container is manufactured in a foreign country, the package and container SHALL NOT display country of origin labeling. Phrases including, but not limited to, "Made in [Name of Foreign Country.]" or "Product of [Name of Foreign Country.]" are strictly prohibited (see clause 4A52.225-1(f)).

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

(End of clause)

4A52.211-4 Commodity/Packaging Labeling Requirements (Mar 2019)

(a) USDA Foods products must comply with all applicable FDA and USDA labeling requirements and any additional features outlined in product specifications.
http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm513734.htm

(1) Any deviations from the labeling requirements in this section must be approved by the Contracting Officer, in writing, prior to start of production.

(2) Primary packaging labels or shipping containers with missing or incorrect information must be corrected before the product can be shipped.

(b) **PRIMARY PACKAGING (Immediate Container)**:

(1) FDA/USDA defines **minimum label information on primary packaging:**

(i) Company name
(ii) Company/Plant location or FSIS establishment number.
(iii) Food item
(iv) Ingredient list
(v) Allergen statement, as applicable
(vi) Nutrition Facts Panel (except for foodservice pack products)
(vii) Traceability code (see below)

(viii) Cooking/heating/handling instructions, as applicable

(2) Commercial Labels. "Commercial" labels must be the processor's own **retail (e.g. commercially available, off the shelf)** label. (Commercially available off-the-shelf (COTS) item is described in the 52.212-4 definitions addendum section of this contract.) Distributors' labels are not allowed. If the vendor does not have a commercial label for retail/consumer sales, please refer to the minimum color requirements, exclusive of the package color, found in the commodity specifications documents. For some products, if the primary container does not allow the product to be visible, the label must provide a visual representation for the food.

(3) **Traceable Product Codes**. Labeling and packaging must meet all applicable FDA and USDA requirements and contain a code which allows traceability of the product in the event of a recall. When the company uses the same commercial label for the product certified as complying with USDA specifications, the identification system must differentiate between product manufactured for USDA contracts and non-USDA products.

(4) **Nutrition Facts, Ingredients and Allergen statements.** Consumer and individual sized containers/packages must include a Nutrition Facts Panel, ingredients, and allergen statement. The ingredient statement, even for single ingredient foods, must be included as a statement separate from the name of the product, e.g. Ingredients: _____. The allergen statement must comply with the Food Allergen Labeling and Consumer Protection Act (FALCPA) for any product which contains milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, soy or wheat. In accordance with FDA guidance, USDA does not encourage the use of voluntary allergen advisory labels/statements. Vendors must implement effective allergen controls. If advisory labels are used, they must comply with FDA labeling requirements and not be misleading.

Note: Vendors must provide nutrition information, ingredient and allergen statements, and Child Nutrition Program crediting information upon request for all USDA Foods products.

(c) **SHIPPING CONTAINERS:**

(1) **Shipping container/carton labels must include**:

(i) USDA Material code
(ii) Purchase order number
(iii) Company name
(iv) Company/Plant location or FSIS establishment number
(v) Food item
(vi) Ingredient list
(vii) Allergen statement, as applicable
(viii) Nutrition Facts Panel (foodservice pack products only)
(ix) Traceability code
(x) UPC symbol/code (see below)
(xi) USDA Shield, when applicable

(2) Labeling and marking information must be water-fast, non-smearing, of a contrasting color, clear and readable.

(3) Information must be preprinted, stamped, or stenciled on each shipping container; or printed on a self-adhesive label and applied to each shipping container. Please refer to specification documents for sample layouts,

(4) **Nutrition Facts, Ingredients and Allergen statements must be included on shipping containers when not required on the primary package.** The ingredient statement, even for single ingredient foods, must be included as a statement separate from the name of the product, e.g. Ingredients: _____. The allergen statement must be provided in the format which complies with the Food Allergen labeling and Consumer Protection Act (FALCPA) for any product which contains milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, soy or wheat.

(5) **UPC symbols/codes**

(i) The UPC, symbol and code, called Interleaved 2 of 5 (I 2/5), must appear on each shipping container. The complete code, including the check digit, must be printed in machine-readable and human-readable form. The start and stop indicators will be included in the bar codes. Printing, readability, and scanability of the bar code must be in accordance with UPC guidelines published by:

GS1 US Corporate Headquarters
Princeton Pike Corporate Center
1009 Lenox Drive, Suite 202
Lawrenceville, NJ 08648 Phone: 609.620.0200
https://www.gs1us.org/what-we-do/about-gs1-us

(ii) USDA has acquired a unique processor's identification number for the commodity purchase programs and will provide these item codes for the commodity contracts. This only applies to non-manufacturers for fruit and vegetable products that do not have a commercial retail product that corresponds to the USDA products.

(d) **Inventory Control Information.** The processor may include any additional information (including bar codes) for processor inventory control purposes. This information may be applied somewhere on the surface of the shipping container but must not cover or conflict with the labeling requirements.

(End of clause)

4A52.211-5 Compensation for Delays in Delivery

(a) If a Contractor determines that it will not be able to deliver the commodity by the Not-Later-Than (NLT) delivery date, the Contractor shall notify the Contracting Officer immediately. If the reason for not meeting the NLT delivery date is beyond the control or negligence of the Contractor, the Contractor is required to submit a waiver request within 2 working days after the scheduled NLT delivery date. (Sample waiver requests are available online.) Failure to submit a waiver request within the time specified will result in liquidated damages being assessed. Waiver requests submitted after the time specified will not be accepted. See clause 52.211-11, of the Master Solicitation.

(b) If a Contractor delivered a product and the product is rejected, the Contractor shall deliver an acceptable replacement product prior to the end of the NLT delivery date and liquidated damages will not be assessed. However, if the replacement product will be delivered beyond the NLT delivery date, liquidated damages will be assessed.

(c) When deliveries are made by contract carrier or vendor's own vehicle, the date shown on the signed commercial bill of lading will be considered the date of delivery.

(End of clause)

4A52.211-6 Unitization Requirements (Sept 2019)

Shipments shall comply with the following unitization requirements:

(a) Unless otherwise specified by the Government, all shipments of packaged products shall be unitized (palletized and stretch wrapped).

(b) Pallets shall be:

(1) Constructed to facilitate the safe handling and transportation of the packaged product, as a unit, without loss or damage.

(2) A Number 2, four-way, reversible flush stringer with no broken runners or slats.

(3) Suitable for use in the shipment of food products.

(c) Plastic stretch wrap shall be:

(1) Constructed of a plastic film which is to be stretched a minimum of 50 percent beyond its original length when stretched around the pallet load.

(2) Applied as tightly as possible around all tiers of the palletized shipping containers. The shipping containers shall be held firmly in place by the stretch wrap.

(d) Pallet loads shall be:

(1) Stacked in such a way as to minimize the amount that shipping containers overhang the edges of pallets.

(2) Blocked and braced or otherwise loaded into the conveyance in a manner that prevents shifting during transit.

(e) USDA does not participate in a pallet exchange program.

(End of clause)

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

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Certified cost or pricing data*. If the Contractor has been required to submit certified cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the modification; or

(4) Performance of the modification.

(c) *Comptroller General*. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause and also the right to interview any current employee regarding such transactions.

(d) *Availability*. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of certified cost or pricing data.

(Applicable for contracts exceeding $750,000)

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

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4(a)(1); and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later, or before pricing any subcontract modifications involving aggregate increases and/or decreases in

costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor's proposal in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1(b) applies.
(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR subsection 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4(a)(1).

(End of clause)

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

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

(End of clause)

4A52.219-2 The HUBZone Program

The Government will award contracts to eligible HUBZone small business concerns in accordance with FAR Subpart 19.13, except for price evaluation preference mandated by the provisions of 15 U.S.C. 657a, as follows:

In any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be—

(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation;
(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and
(iii) 0 for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

In accordance with the provision of 13 CFR 125.6(d), in the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, none of the commodity being procured will be obtained by the prime contractor through a subcontract for the purchase of the commodity in substantially the final form in which it is to be supplied to the Government.

(End of clause)

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

(a) The products of agricultural commodities acquired under this contract must be a product of the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as "the United States"), except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients (*See* AGAR 470.103(b)). Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise: (1) produced in the United States; and (2) commercially available in the United States at fair and reasonable prices from domestic sources. See **4A52.225-2 U.S. Origin Product – Ingredient Waivers** below.

(b) If the Contractor processes or handles products originating from sources other than the United States, the Contractor must have an acceptable identification and segregation plan for those products to ensure they are not used in commodities purchased under this Master Solicitation—except for commingled products (see paragraph (c)). This plan must be made available to an AMS representative and the Contracting Officer or agent thereof upon request. The Contractor must ensure that the Contractor and any subcontractor(s) maintain records such as invoices, or production and inventory records evidencing product origin, and make such records available for review by the Government in accordance with FAR 52.214-26.

(c) For commodities that the Department has determined to be generally commingled, a commingled product shall be considered to be a product of the United States if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to the offeror, or obtains during the contract performance period specified in the solicitation, or a combination thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the United States. However, if the commodity can be readily stored on an identity preserved basis with respect to its country of origin, the Government may require that the commodity acquired under this contract be of 100 percent U.S. origin.

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

(e) 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 1) must be completed, and must be presented to an AMS representative, the Contracting Officer, or agent thereof upon request.

(f) FAR clause 52.225-5, Trade Agreements incorporated by reference in FAR clause 52.212-5 applies only to packaging and container components. Agricultural commodities and their products are exempt from 52.225-5.

(End of clause)

4A52.225-2 U.S. Origin Product – Ingredient Waivers

The requirement for a commodity and/or a component ingredient to be entirely produced and/or processed in the United States may be waived due to non-availability at fair and reasonable prices.

(a) Waived ingredients may be subject to the following two-part test to define a U.S. end product:

(1) The article must be manufactured in the United States; and

(2) The cost of domestic components must exceed 50 percent of the cost of all the components.

(b) The following ingredients are subject to the U.S origin product requirement:

(1) [Reserved]

(2) Waived ingredients may be acquired as a foreign end product without regard to the restrictions of the U.S origin product requirement.

(c) The following ingredients have been determined by the Contracting Activity as not available at fair and reasonable prices and are waived from all U.S. origin restrictions:

(1) Vitamin A (Retinol Palmitate)
(2) Vitamin D
(3) Carageenan (stabilizing agent)
(4) Sorbic Acid (preservative)
(5) Potassium Sorbate (preservative)
(6) Rennet (coagulant)

(End of clause)

4A52.225-3 U.S. Origin Verification and Tracebacks (Mar 2019)

When requested, contractors will make all paperwork available to USDA that confirms 100% domestic origin traceback from the destination or final package (whichever is applicable), to the origin orchard/field/vineyard/farm/etc., including all steps in the process.

(End of clause)

52.232-11 Extras (Apr 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the Contracting Officer.

(End of clause)

52.232-18 Availability of Funds (Apr 1984)

/ / Funds are not presently available for this contract. The Government's obligation under this contract 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 until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

52.232-40 Providing Accelerated Payments 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.

(End of clause)

4A52.232-1 Contractor Expenses

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

(End of clause)

4A52.232-3 Electronic Invoicing

Electronic invoicing is authorized and required for this contract as referenced in 52.212-4(g).

(1) *ASN as invoice.* Contractor's advance shipment notice (ASN), entered in WBSCM in accordance with 4A52.211-2, will serve as the contractor's invoice, i.e., request for payment. Separate entry of an invoice using WBSCM's Supplier Self Service is no longer required.

(2) *Supporting documents.* When required by the contract or directed by the contracting officer, contractor shall upload additional supporting documents when submitting their shipment receipt or ASN in WBSCM. This may include:

(A) Proof of product conformance—as required in the applicable commodity specifications document or solicitation—such as:

i. Official checkloading certificate(s), and/or
ii. Certificate of Analysis (COA), and/or
iii. Certificate of Conformance (per FAR Clause 52.246-15), and/or
iv. AMS Commodity Inspection Certificate or Graders Memorandum.

(B) Any waivers granted by the Contracting Officer, if applicable.

(C) The Contracting Officer reserves the right to specify any combination of documents listed above to evidence proof of product conformance.

(D) Bill of Lading (see clause 4A52.247-3, *Bill of Lading Notations*, for required contents of a bill of lading.)

(3) *Authorization to pay.* The Government will not review an invoice for payment until all required supporting documentation has been received. In addition to the items in paragraph (2) above, all invoice payments must be supported by a receiving report (proof of delivery). A recipient-entered WBSCM goods receipt will serve as the receiving report. The recipient (receiving official) should enter the goods receipt into WBSCM no later than the 2nd calendar day after delivery.

(4) *Payment due dates.* The due date for making an invoice payment is as follows—

(*see next page*)

Upon receipt of a proper invoice for:	Payment must be made as close as possible to but not later than:
Meat or meat food products. As defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Public Law 98-181, including any edible fresh or frozen poultry meat, and perishable poultry meat food product, fresh eggs, and any perishable egg product.	7th day after receipt of a proper invoice.
Fresh or frozen fish. As defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)).	7th day after receipt of a proper invoice.
Perishable agricultural commodities. As defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C 499a(4)). (This includes frozen fruit and vegetable products).	10th day after receipt of a proper invoice, unless another day is specified in the contract.
(4) Dairy products. As defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products fall within this classification. Nothing in the Act limits this classification to refrigerated products. If questions arise regarding the proper classification of a specific product, the contracting officer must follow prevailing industry practices in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the contractor making the representation.	10th day after a proper invoice has been received
All other processed canned commodities (including fruits, vegetables, fish, and poultry products).	30th day after receipt of a proper invoice.

(End of clause)

52.242-13 Bankruptcy (July 1995)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of government contract numbers and contracting offices for all government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

52.242-15 Stop-Work Order (Aug 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)

52.242-17 Government Delay of Work (Apr 1984)

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed—

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(End of clause)

52.244-6 Subcontracts for Commercial Items (Jan 2019)

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

"Commercial item" and "commercially available off-the-shelf item" have the meanings contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

(c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (*Oct* 2015) (41 U.S.C. 3509), if the subcontract exceeds $5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (*Jun* 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (*Jan* 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (*Jun* 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

(v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (*Jul* 2018) (Section 1634 of Pub. L. 115-91).

(vi) 52.219-8, Utilization of Small Business Concerns (*Oct* 2018) (15 U.S.C.637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vii) 52.222-21, *Prohibition* of Segregated Facilities (*Apr* 2015).

(viii) 52.222-26, *Equal* Opportunity (*Sept* 2015) (E.O.11246).

(ix) 52.222-35, *Equal* Opportunity for Veterans (*Oct* 2015) (38 U.S.C.4212(a));

(x) 52.222-36, *Equal* Opportunity for Workers with Disabilities (*Jul*2014) (29 U.S.C.793).

(xi) 52.222-37, *Employment* Reports on Veterans (*Feb 2016*) (38 U.S.C.4212)

(xii) 52.222-40, *Notification* of Employee Rights Under the National Labor Relations Act (*Dec* 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiii)

(A) 52.222-50, Combating Trafficking in Persons (*Jan* 2019) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (*Mar*2015) of 52.222-50(22 U.S.C. chapter 78 and E.O. 13627).

(xiv) 52.222-55, *Minimum* Wages under Executive Order 13658 (*Dec*2015), if flow down is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xv) 52.222-62, Paid Sick Leave Under Executive Order 13706 (*Jan* 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xvi)

(A) 52.224-3, *Privacy* Training (*Jan* 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (*Jan* 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).

(xvii) 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).

(xviii) 52.232-40, *Providing* Accelerated Payments to Small Business Subcontractors (*Dec*2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xix) 52.247-64, *Preference* for Privately Owned U.S.-Flag Commercial Vessels (*Feb*2006) (46 U.S.C. App.1241 and 10 U.S.C.2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

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

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

52.246-11 Higher-Level Contract Quality Requirement--Dairy, Grain and Oilseed Products (Dec 2014) [as applicable]

(a) The Contractor shall comply with the higher-level quality standard(s) listed below.

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

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

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

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

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

(i) Control of such things as design, work operations, in-process control, testing, and inspection; or

(ii) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology. (End of clause)

4A52.246-1 Contract Quality Requirement

In accordance with FAR clause 52.246-11, Higher-Level Contract Quality Requirement) the following apply:

1) When contractor's quality control system is not ready at the time specified by the Contractor for performance of quality assurance at source, the Contracting Officer may charge to the Contractor the additional cost of quality assurance.
2) The Contracting Officer may charge the Contractor for any additional cost of quality assurance when prior nonconformance makes re-surveillance necessary.

(End of Clause)

4A52.246-2 Food Defense Requirements (Sept 2019)

(a) Current and potential Contractor(s) and subcontractor(s) shall have an approved food defense plan in place **at the time of bid opening/proposal due date as specified in the solicitation**. The approved food defense plan 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).

(b) The documented and operational food defense plan must be audited and approved by USDA, AMS prior to the bid opening date of the solicitation. All nonconformance(s) listed in the audit report for poultry and livestock products must be addressed in writing within 14 days to the **Quality Assessment Division prior to the bid opening date of the solicitation. However, for fruit and vegetable products, nonconformance(s) must be addressed with Specialty Crops Inspection/Food Safety and Inspection Service prior to the bid opening date of the solicitation**. 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.

(c) Contractors 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.

(d) 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 bid opening date of the IFB. Offerors who submit a bid with a processing plant and/or shipping point that are not in compliance with this requirement will be deemed non-responsive for that processing plant and/or shipping point.

(End of Clause)

4A52.246-3 Manufacturing Practices – Processed Fruit and Vegetable and Poultry Products [as applicable]

(a) Current Good Manufacturing Practices

All processed fruit and vegetables must be produced in accordance with the Food and Drug Administration's Current Good Manufacturing Practices (21 C.F.R., Part 110 **and/or Part 117), whichever is applicable at the time of manufacture.**

(b) Plant Survey or Plant Systems Audit (PSA)

(1) Successful bidders are required to undergo and pass an annual plant survey or PSA. The primary purpose of a plant survey or PSA is to ensure that products are produced in a clean, sanitary environment and verify that Federal requirements are met. Contractors are required to maintain process operations records that are sufficiently detailed as to allow AMS, **Specialty Crop Program, and Specialty Crop Inspection Division (SCID)**, to determine past and current sanitation practices.

(2) The AMS, **Specialty Crop** Program, SCID, will conduct the plant surveys/PSA. SCID personnel will follow the procedures found in the most current version of SCID AIM, Sanitation and Safety Manual, or the most current version of SCID AIM, Plant Systems Audit Manual.

(3) Contractors must provide the Contracting Officer with a copy of an acceptable completed plant survey/PSA. An acceptable plant survey/PSA will be valid for one year.

(4) Contractors who have a SCID in-plant contract service agreement will be considered as having met the plant survey/PSA requirement, since a plant survey/PSA is a prerequisite to a contract service agreement. Similarly, Contractors who have completed a SCID plant survey/PSA for any other purpose within one year of award will also be deemed to have satisfied this requirement.

(5) The plant survey/PSA must be completed and approved prior to the bid opening date of the IFB. 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 bid opening date of the IFB. Offerors who submit a bid with a processing plant and/or shipping point that are not in compliance with this requirement will be deemed non-responsive for that processing plant and/or shipping point.

4A52.246-4 FDA Food Facility Registration Number

In accordance with the **Public Health Security and Bioterrorism Preparedness and Response Act of 2002**, 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 the **Food Safety Modernization Act of 2011** (FSMA) requires additional information for facilities to renew such registrations. If applicable, provide your FDA food facility registration number. FDA guidance is available at: https://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/ucm2006831.htm

52.246-15 Certificate of Conformance (Apr 1984)

(a) When authorized in writing by the cognizant Contract Administration Office (CAO), the Contractor shall ship with a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.

(b) The Contractor's signed certificate shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Administration Services. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

(c) The Government has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

(d) The certificate shall read as follows:

I certify that on _____ [*insert date*], the ____ [*insert Contractor's name*] furnished the supplies or services called for by Contract No._____ via ____ [*Carrier*] on _____ [*identify the bill of lading or shipping document*] in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document.

DATE OF EXECUTION: _____
SIGNATURE: _____
TITLE: _____

(End of clause)

4A52.247-1 Loading, Blocking, and Bracing for Multiple Delivery Points (drops) on One Conveyance

When a shipment has multiple delivery points (drops), contractor must load and brace the conveyance for accurate and economical unloading, e.g. load and brace truck trailers in reverse order of delivery.

(End of clause)

4A52.247-2 Special Instruction for Shipments to Puerto Rico

All deliveries to Puerto Rico must cite on the Bill of Lading and Ocean Transportation manifest the applicable Recipient Agency Tax Identification Number (TIN) and Merchant Registration Number. Successful awardee will be responsible for contacting the contracting officer's representative to obtain the appropriate tax identification number.

(End of clause)

4A52.247-3 Bill of Lading Notations (Sept 2019)

Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with the following notations, as appropriate:

1. Shipper Name and Shipment Origin Address
2. USDA Contractor Name, if different than shipper
3. Purchase Order Number and Item Number
4. When provided, Sales Order Number and Item Number.
   or Purchase Requisition and Item Number
5. Consignee: Purchase Order Item's Goods Recipient Name
   c/o Purchase Order Item's Ship-to Name and Address
6. Number and Type of Units, Net Weight, and Material Description
7. Statement: "For USDA FOOD DISTRIBUTION PROGRAMS"
8. Manufacturer's Lot Code/Lot Identification Number
9. Serial Number(s) of Barrier-Type Seals Applied

Note: When multiple Purchase Order Items are shipped in one conveyance, show the applicable information for each Purchase Order Item.

(End of clause)

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

(a) The term "f.o.b. destination," as used in this clause, means—

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarded for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(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 in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

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

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and
(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

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

(a) Upon receipt of shipping instructions, as provided in this contract, the supplies to be included in any carload shipment by rail shall be loaded, blocked, and braced by the Contractor in accordance with the standards published by the Association of American Railroads and effective at the time of shipment.
(b) Shipments, for which the Association of American Railroads has published no such standards, shall be loaded, blocked, and braced in accordance with standards established by the shipper as evidenced by written acceptance of an authorized representative of the carrier.
(c) The Contractor shall be liable for payment of any damage to any supplies caused by the failure to load, block, and brace in accordance with acceptable standards set forth herein.
(d) A copy of the appropriate pamphlet of the Association of American Railroads may be obtained from that Association.

(End of clause)

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;
(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—

(i) The Contracting Officer, and
(ii) The:

Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590.

Subcontractor bills of lading shall be submitted through the Prime Contractor.
(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
(A) Sponsoring U.S. Government agency.
(B) Name of vessel.
(C) Vessel flag of registry.
(D) Date of loading.

(E) Port of loading.
(F) Port of final discharge.
(G) Description of commodity.
(H) Gross weight in pounds and cubic feet if available.
(I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to—

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610.

(End of clause)

452.247-70 Delivery Location (Feb 1988)

Shipment of deliverable items, other than reports, shall be to: point(s) of delivery specified in the Government's delivery instructions.

(End of Clause)

4A52.247-1 Seals on Transportation Conveyances

(a) Suppliers of commodities, products and/or services—under the supervision of a USDA-AMS certification agent, when applicable—shall be responsible for placing a seal(s) on all cargo doors of each transportation conveyance upon completion of loading, partial unloading, inspection, or servicing.

(b) Seals must meet the American Society for Testing and Materials (ASTM) Standard, (F-1157-04, and/or the International Organization for Standards (ISO) 17712-2010. Seals shall be 1/8-inch diameter cable, high security bolt, barrier-type, or equivalent device which can only be removed by bolt cutter type tools. Seals shall be sequentially numbered. The contractor or its agent shall provide a sufficient number of barrier-type seals to ensure security of the load while in route through final destination. (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 (multi-stop)).
(c) The seal numbers shall be documented on the Bill of Lading, and shipment manifest, certificate, or other delivery documents, as applicable, which must be signed or acknowledged by the carrier or its agent.
(d) It will be the responsibility of the Contractor to provide sufficient number of seals to the carrier service and to ensure that the trailer is sealed after each delivery location (when destined for multiple recipients). The seal number must be recorded on the appropriate delivery document and correspond with the applied seal at the time of arrival at the next destination.
(e) 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.
(f) Deliveries will be rejected, in which seals have not been used to secure all cargo doors, if:

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

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

(1) Conditions of Container Inspections arrangements are available by accessing the AMS website at:
https://www.ams.usda.gov/services/sci-contacts
Please select AMS Federal Inspection Offices at:
https://www.ams.usda.gov/services/sci-contacts/field-inspection-offices
(2) The Contractor is responsible for payment of all fees incurred as a result of a Condition of Container Inspection.

(End of clause)

4A52.247-2 Additional Shipping Requirements

Items purchased as a result of this solicitation shall not be transported near non-human consumption products, malodorous products or other types of harmful items that could contaminate commodities.

(End of clause)

52.253-1 Computer Generated Forms (Jan 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

D. 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (Aug 2019)

(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) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(6) 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:

[Contracting Officer check as appropriate.]

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 2018) (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).

__ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (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 (Oct 2018) (15 U.S.C. 637(d)(2) and (3)).

__ (17) (i) 52.219-9, Small Business Subcontracting Plan (Aug 2018) (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.

x (iv) Alternate III (Nov 2016) of 52.219-9.

__ (v) Alternate IV (Aug 2018) 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. 657f).

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 (Jan 2018) (E.O.13126).

x (27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

x (28) (i) 52.222-26, Equal Opportunity (Sept 2016) (E.O.11246).

__ (ii) Alternate I (Feb 1999) of 52.222-26.

x (29) (i) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).

__ (ii) Alternate I (July 2014) of 52.222-35.

x (30) (i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C.793).

__ (ii) Alternate I (July 2014) of 52.222-36.

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 (Jan 2019) (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) (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.)

__ (36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

__ (37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun2016) (E.O. 13693).

__ (38) (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.

__ (39) (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.

__ (40) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

__ (41) (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.

x (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).

__ (43) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).

__ (44) 52.223-21, Foams (Jun 2016) (E.O. 13693).

__ (45) (i) 52.224-3 Privacy Training (Jan 2017) (5 U.S.C. 552 a).

__ (ii) Alternate I (Jan 2017) of 52.224-3.

x (46) 52.225-1, Buy American-Supplies (May 2014) (41 U.S.C. chapter 83).

__ (47) (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 (48) 52.225-5, Trade Agreements (Aug 2018) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

x (49) 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).

__ (50) 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).

__ (51) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

__ (52) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

__ (53) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C.4505, 10 U.S.C.2307(f)).

__ (54) 52.232-30, Installment Payments for Commercial Items (Jan 2017) (41 U.S.C.4505, 10 U.S.C.2307(f)).

x (55) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct 2018) (31 U.S.C. 3332).

__ (56) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) (31 U.S.C.3332).

__ (57) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C.3332).

__ (58) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

__ (59) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) (15 U.S.C. 637(d)(13)).

x (60) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

__ (ii) Alternate I (Apr 2003) of 52.247-64.

__ (iii) Alternate II (Feb 2006) of 52.247-64.

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

[Contracting Officer check as appropriate.]

__ (1) 52.222-17, Nondisplacement of Qualified Workers (May 2014)(E.O. 13495).

__ (2) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

__ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

__ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

__ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

__ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).

__ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).

__ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).

__ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).

__ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792).

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

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

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

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

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

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

(ii) 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)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C.637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.

(vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(viii) 52.222-26, Equal Opportunity (Sept 2015) (E.O.11246).

(ix) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C.4212).

(x) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C.793).

(xi) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C.4212)

(xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiii) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

(xiv) (A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O 13627).

(B) Alternate I (Mar 2015) of 52.222-50(22 U.S.C. chapter 78 and E.O 13627).

(xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).

(xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).

(xvii) 52.222-54, Employment Eligibility Verification (Oct 2015) (E.O. 12989).

(xviii) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).

(xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).

(xx) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).
(B) Alternate I (Jan 2017) of 52.224-3.

(xxi) 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).

(xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

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

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

(End of clause)

III. CONTRACT DOCUMENTS, EXHIBITS AND ATTACHMENTS

A. Commodity specifications including packaging and packing requirements are available at: https://www.ams.usda.gov/selling-food/product-specs

B. Exhibit 1 (next page)

DOMESTIC ORIGIN CERTIFICATION

DOMESTIC ORIGIN CERTIFICATION For Fruit and Vegetable Products and Poultry Products 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: _____
Crop Year (Packing Season, if applicable): _____

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 processes 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 for fresh or frozen fruits and vegetables 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: _____

IV. SOLICITATION PROVISIONS

NOTE: ITEMS MARKED WITH AN ASTERISK (*) HAVE BEEN TAILORED IN THE ADDENDA BELOW IN **B**

A. 52.212-1 Instructions to Offerors—Commercial Items (Oct 2018)

(a) *North American Industry Classification System (NAICS) code and small business size standard*. The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers*.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers*.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples*. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers*. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with subpart 4.10 of the Federal Acquisition Regulation), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late submissions, modifications, revisions, and withdrawals of offers.

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)

(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and-

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids*). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Availability of requirements documents cited in the solicitation.

(1)

(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to-

GSA Federal Supply Service Specifications Section

Suite 8100 470 East L'Enfant Plaza, SW
Washington, DC 20407
Telephone (202) 619-8925
Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(i) ASSIST (https://assist.dla.mil/online/start/).

(ii) Quick Search (http://quicksearch.dla.mil/).

(iii) ASSISTdocs.com (http://assistdocs.com).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by-

(i) Using the ASSIST Shopping Wizard (https://assist.dla.mil/wizard/index.cfm);

(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Unique entity identifier*. (Applies to all offers exceeding $3,500, and offers of $3,500 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM).) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see subpart 32.11) for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at www.sam.gov for establishing the unique entity identifier.

(k) [Reserved]

(l) *Debriefing*.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

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

B. ADDENDA TO 52.212-1

(b) Submission of offers. – Addendum to 52.212-1
See 4A52.214-1 Electronic Submission of Bids.

(c) Period for acceptance of offers. – Addendum to 52.212-1
The offeror agrees to hold the prices in its offer firm through the "Award Notification Date" specified elsewhere in this solicitation.

(l) Debriefing. – Addendum to 52.212-1
(Not applicable for invitation for bids).

C. 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (OCT 2018)

The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically in the System for Award Management (SAM) Website accessed through https://www.sam.gov. 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*. [Omitted. Definitions are the same as those on the SAM website used to completed annual representations and certification electronically.

(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 in SAM.

(2) The offeror has completed the annual representations and certifications electronically in SAM accessed through http://www.sam.gov. After reviewing the SAM 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), at the time this offer is submitted and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs [to be entered in the bid certification question section of the WBSCM electronic bid].

[*Offeror to identify the applicable paragraphs at (c) through (u) 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) Through (u) [Omited.] Not required as representations and certification is required electronically through SAM. Full text of 52.212-3, including paragraphs (c) through (u) are available at: https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1060550

(End of provision)

D. Additional Provisions

52.204-7 System for Award Management (Oct 2018)

(a) Definitions. As used in this provision—
"Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government

entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

"Registered in the System for Award Management (SAM)" means that–

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14) into SAM

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

"Unique entity identifier" means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b)

(1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.
(2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
(3) Company physical street address, city, state, and Zip Code.t
(4) Company mailing address, city, state and Zip Code (if separate from physical).
(5) Company telephone number.
(6) Date the company was started.
(7) Number of employees at your location.
(8) Chief executive officer/key manager.
(9) Line of business (industry).
(10) Company headquarters name and address (reporting relationship within your entity).

(d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See www.sam.gov for information on registration.

(End of provision)

452.204-70 Inquiries (Feb 1988)

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

(End of provision)

52.209-7 Information Regarding Responsibility Matters (Oct 2018)

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

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

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

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

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

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

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

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

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

(i) In a criminal proceeding, a conviction.

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

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

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

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

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

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

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

(Applicable for contracts expected to exceed $550,000)

(End of provision)

4A52.209-1 Past Performance with Regard to Offeror's Present Responsibility

(a) The offeror must certify to timely performance on current contracts and subcontracts in the attribute questions of the IFB in WBSCM. The offeror shall notify the Contracting Officer of late deliveries prior to submission of bids. The Contracting Officer will determine if late performance is beyond the control or negligence of the offeror prior to the bid closing date of the IFB. The Contracting Officer may also deem the offeror non-responsible and ineligible to participate in an IFB if the offeror or any of their affiliates or subcontractors is delivering late and the late deliveries are not due to causes beyond the offeror's control or negligence. Past performance will be evaluated for Contractor's performance for the last six (6) months prior to bid opening of the IFB.

(b) Bidders are cautioned NOT to BID on quantities in excess of what they can reasonably expect to timely deliver in accordance with the contract. Deliveries must be made during the contracted delivery period, and no extensions will be granted due to weekends or Federal holidays.

(c) A false certification may result in rejection of the offer, suspension and debarment by USDA, termination of the contract, liability for damages under the provisions of this Master Solicitation, other administrative actions, or criminal prosecution.

(End of provision)

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

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b)(1) Bidders shall acknowledge receipt of any amendment to this solicitation–

(i) By signing and returning the amendment;

(ii) By identifying the amendment number and date in space provided for this purpose on the form for submitting a bid;

(iii) By letter;

(iv) By facsimile, if facsimile bids are authorized in the solicitation; or

(v) By email, if email bids are authorized in the solicitation.

(2) The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

52.214-4 False Statements in Bids (Apr 1984)

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

(End of provision)

4A52.214-1 Electronic Submission of Bids

(a) Offers, modifications, and withdrawals shall be submitted electronically via the Web Based Supply Chain Management Computer System (WBSCM). Submission of the aforementioned by any means other than WBSCM will be deemed nonresponsive.

(i) WBSCM is available online at: https://portal.wbscm.usda.gov/.

(ii) Links to registration forms, help desk contacts, training courses, system updates, minimum system requirements, etc is available at: https://www.ams.usda.gov/selling-food/wbscm

(b) Prerequisites for creating and submitting a domestic bid response:

(i) WBSCM Vendor Registration – If you are unsure if your company is properly registered, contact the WBSCM help desk, as provided in Section C below. If your company is not registered in WBSCM, fill out and submit the vendor registration form at the following URL: https://www.ams.usda.gov/selling-food/wbscm

Vendors will be notified via email when vendor registration is complete.

(ii) WBSCM Corporate Administrator Registration - Vendors shall authorize a corporate administrator by submitting a signed copy of the SCM2 form. A person with proper legal authority for the company shall authorize individuals who will serve as:

1) Primary Corporate Administrator, responsible to—
   a. Register plants
   b. Create users - with appropriate roles e.g. Commodity Offer
   c. Assign users to a plant
   d. Update user roles, assignments, and plant registration as appropriate, e.g. delete user as they leave the company.

2) Secondary Corporate Administrator

(c) WBSCM Offer Information

(i) Work Instruction for Domestic Commodity Bidding offer submission may be found at: https://www.ams.usda.gov/selling-food/wbscm under "WI and Follow On Activities."

(ii) Prospective contractors are responsible for starting the applicable processes early in the offering period and completing the applicable processes soon enough to ensure that their offer, modification, or withdrawal is received by the exact time specified herein for receipt of offers. Offer submission may include processes, such as: register vendor, authorize user access and roles, create eAuthentication account, accept WBSCM rules of behavior, register plants, assign users to plants, save plant responses and submit vendor response (offer).

(iii) Quantities will be awarded in increments of USDA standard truckload quantities, subject also to the offer's quantity constraints. Quantity constraints shall be entered in pounds.

(iv) Constraints - AMS does not allow offerors to enter minimum constraints, but allows entering maximum constraints. AMS may award any volume up to the maximum constraints submitted by the offeror. Any minimums submitted will not be accepted.

(v) Award(s) documents will be available on the Vendor's Supplier Self-Service Page in WBSCM by the date specified in the Solicitation.

(vi) An offer requires timely submission of all plant responses AND a vendor response.

1. Plant response consists of:
   a. PRICE for applicable items shown herein on the schedule of supplies in the Bid Invitation Item Details Section, see below and
   b. CERTIFICATION ANSWERS in the Questions section of the RFx Information tab.

   Important: Submission of the plant response just saves the data entered – the vendor response must also be submitted.

2. Vendor response consists of:
   a. Marking that NO CONSTRAINTS apply if vendor can supply the cumulative item quantity offered OR entering quantity CONSTRAINTS to limit the offer to a quantity to less than the cumulative item quantity offered, and
   b. Plant responses – submission of vendor response before the Offer Due Date and Time also physically submits all previously submitted/saved plant responses. Failure to timely submit the vendor response will result in no offer for the applicable solicitation.

(vii) It is imperative that the offeror verify the accuracy of their offer/quote. The offer/quote may be printed from the WBSCM portal path Supplier>Bid Management>Vendor Response Log.

(viii) Bid invitation Item details section:

Hierarchy of Item Numbers (Item) is indicated by progressive indentation:

-Level 1 Material Group,

-Level 2 Material type and pack size,

-Level 3 Destination single or multiple stops,

-Level 4 Details; Material type and pack size, date range product required by, postal zip code, quantity, and unit of measure. Railroad information is not available unless shown. Item Offered price is entered at level 4 only. Items will be awarded in increments of truckload sizes.

(ix) Multiple stop Items:

1) Are identified by LOT: number, city state/city state in the Tendering text at level 3 of an applicable Item;

2) Have up to three stop-offs and a final destination.

(x) Offshore Items:

Items for delivery to offshore locations require the contractor to arrange and pay for ocean transportation in addition to the land transportation. Offshore examples are Hawaii, Puerto Rico, and the Virgin Islands. Offshore locations are identified by the cities and postal abbreviations shown at the level 3 Item data.

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

1. Any failure of the bidder's computer hardware or software.
2. Availability of the bidder's Internet service provider.
3. Delay in transmission due to the speed of the bidder'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 date of bid opening due to high volume of internet traffic.

(xii) 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 price(s) on the item number(s) the firm want(s) to be considered for award, and
3) total quantity the company wants 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.

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

1) Offer is made subject to the Master Solicitation; the applicable Supplement and/or Specification(s); the Solicitation; and FAR/AGAR.

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).

4) Furnish name, title, phone number and e-mail address of person submitting this bid (must be an officer of the company or a person authorized to execute contracts on behalf of the bidder).

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

(End of provision)

52.214-6 Explanation to Prospective Bidders (Apr 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

52.214-10 Contract Award—Sealed Bidding (July 1990)

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

(End of provision)

52.**214-12 Preparation of Bids (Apr 1984)**

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.
(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.
(c) For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.
(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.
(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.
(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)

52.214-14 Place of Performance—Sealed Bidding (Apr 1985)

(a) The bidder, in the performance of any contract resulting from this solicitation, o intends, o does not intend [*check applicable box*] to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.
(b) If the bidder checks "intends" in paragraph (a) of this provision, it shall insert in the spaces provided below 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 BIDDER

_____ _____

_____ _____

(End of provision)

4A52.214-3 Place of Performance – Sealed Bidding

(a) Offers shall accurately represent the plant location(s). Plant location is defined as the place where an end product is assembled from components, packaged, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. Upon acceptance of an offer, the combination of plant location and item becomes a contract term.
(b) Offerors are directed to submit offers from only plant locations. Offers for locations representing non-plant locations, such as, company headquarters or Shippers Option may be deemed non-responsive.
(c) Prospective contractors need to verify, early in the offering period that the appropriate plant locations are entered and approved in WBSCM. Plant locations that are not approved cannot have an offer submitted in association with that plant. Therefore, any plant locations not approved, from which offeror intends to use in performance of the contract, should be added by vendor's corporate administrator.

52.214-22 Evaluation of Bids for Multiple Awards (Mar 1990)
In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

52.214-34 Submission of Offers in the English Language (Apr 1991)
Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

52.214-35 Submission of Offers in U.S. Currency (Apr 1991)
Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

52.216-1 Type of Contract (Apr 1984)
The Government contemplates award of a fixed-price contract resulting from this solicitation.

(End of provision)

52.219-2 Equal Low Bids (Oct 1995)
(a) This provision applies to small business concerns only.
(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

_____

_____

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

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

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

Commodity	**Commodity Requirements Document**	**NAICS Code**	**Small Business Size Standard**
Animal Slaughtering (except Poultry) (Fine Ground/Coarse Ground Beef/Beef Patties/Pork Products)		311611	1,000
Bakery Flour Mix	BFM	311824	750
Butter		311512	750
Canned Dried Beans / Canned Fruit / Canned Juice / Canned Vegetables		311421	1,000
Canning, Specialty (Canned Beef Chili without the beans/Beef Stew)		311422	1,250
Cereal, Fortified R-T-E	FC	311230	1,000
Cereal, Processed	PC	311230	1,000
Cheese, Bulk Cheese, Process Cheese, Mozzarella	DPPC DNAC DMOZ	311513	1,250
Chicken Products / Chicken Bulk / Turkey Products		311615	1,250
Corn Products (including Blue Corn Meal)	CP	311211	1,000
Corn Syrup		311999	500
Crackers (Saltine)	CR	311821	1,250
Dehydrated Products		311423	750
Dried Fruit		311423	750
Dry Beans / Legumes		311999	500
Eggs Products		311999	500
Flour, Bakery	BF	311211	1,000
Flour, Wheat	WF	311211	1,000
Frozen Fruit/ Frozen Juice/ Frozen Vegetables		311411	1,000
Infant Formula	IFD	311514	750
Instant Rice Baby Cereal	RC	311230	1,000
Macaroni and Cheese (Dry)	MC	311824	750
Milk, Evaporated Milk, Instant Nonfat Dry Milk, Nonfortified Nonfat Dry Milk, Ultra High Temperature	EVD IMD DMD UHD	311514	750
Nuts, Roasted		311911	750

Oil, Bulk Soybean	VP	311224	1,000
Oil, Vegetable	VP	311225	1,000
Pancakes, Whole Wheat Frozen	PAN	311412	1,250
Pasta Products	PA	311824	750
Peanut Products (Peanut Butter, Roasted Peanuts)	PP	311911	750
Peanuts, Raw Shelled		311911	750
Perishable Prepared Food Manufacturing (Fresh Fruits and Vegetables, Fresh Sliced Apples, Baby Carrots, etc.)		311991	500
Rice Products	RP	311212	500
Seafood Products Preparation and Packaging (Fresh and Frozen Seafood)		311710	750
Sunflower Seed Butter	SSB	311224	1,000
Tortillas, Whole Wheat Frozen	TOR	311830	1,250
Wild Rice	WR	311212	500
Yogurt	DYO	311511	1,000

(End of provision)

52.222-22 Previous Contracts and Compliance Reports (Feb 1999)

The offeror represents that—

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

(b) It ❒ has, ❒ has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

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

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

"Person"-

(1) Means-

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

"Sensitive technology"-

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically-

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(b) The offeror shall e-mail questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with 25.703-4, by submission of its offer, the offeror-
(1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;
(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and
(3) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds $3,500 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at *https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx*).
(d) *Exception for trade agreements*. The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if-
(1) This solicitation includes a trade agreements notice or certification (*e.g.*, 52.225-4, 52.225-6, 52.225-12, 52.225-24, or comparable agency provision); and
(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

4A52.226-1 Farmer-Owned Cooperatives Participation

(a) In order to implement statutory requirements, farmer-owned cooperatives, regardless of their size status as a large or small business according to the Small Business Administration's (SBA) categorizations, will not be prohibited from participation in commodity purchases made with USDA funds (7 U.S.C 2209f).
(b) To comply with the statutory requirement stated in paragraph (a), all responsible (*See* FAR 9.104-1) farmer-owned cooperatives' offers will be considered for award of commodity contracts, using the evaluation criteria set forth in the solicitation, including the portions of solicitations normally restricted to small business concerns.
(c) In order to be eligible for consideration on the set-aside portions of a commodity purchase, farmer-owned cooperatives must certify their business type as either a "large farmer-owned cooperative" or "small farmer-owned cooperative," as determined using SBA size standards, when submitting an offer.
(d) The *nonmanufacturer rule* defined in FAR Part 19 applies to any subcontracting arrangements.
(e) Large farmer-owned cooperatives are not eligible to be considered for, or receive, price evaluation preferences specific to certain special categories of small businesses, such as HUBZones or small disadvantaged businesses.

(End of provision)

52.233-2 Service of Protest (Sept 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from the contracting officer named in Part I of this solicitation or the contracting office location identified in Part I.
(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)