



United States
Department of
Agriculture

September 20, 2000

DDOD-83

Farm and
Foreign
Agricultural
Services

Farm Service
Agency

Kansas City
Commodity
Office
P.O. Box 419205
Kansas City,
Missouri
64141-6205

**NOTICE TO THE DOMESTIC INDUSTRY
DRAFT OF PROPOSED NEW SOLICITATION/CONTRACT
FOR COMMODITY CREDIT CORPORATION PURCHASES
OF PROCESSED COMMODITIES**

The Federal Acquisition Streamlining Act (FASA) signed into law by President Clinton on October 13, 1994, resulted primarily from:

- The National Performance Review (NPR), and
- The "Section 800" panel report on streamlining Defense procurement.

The NPR identified several areas in which Federal agencies could simplify their acquisition procedures to make the overall system more efficient and less costly. One of the conclusions reached by both reports was to purchase more commercial items using commercial methods to do so.

The definition of "commercial item" is any item that . . . is of a type customarily used for nongovernmental purposes and that has been sold or offered for sale, lease or license to the general public. The Federal Acquisition Regulation (FAR) Part 12 has been rewritten to allow Federal agencies, when buying commercial items that meet the agency's needs, to use procedures that more closely resemble those used in the commercial marketplace.

Commodity Credit Corporation (CCC) has prepared a "Draft" of a proposed solicitation and contract using the mandatory policies and procedures in FAR Part 12. This draft is enclosed and can also be reviewed via the FSA Homepage: <http://www.fsa.usda.gov/daco>.

At the 2nd Annual Domestic Industry Conference in Kansas City on September 26 through September 28, there will be a General Contracting Session on Thursday morning, September 28, specifically to discuss this draft of the proposed solicitation. During the session, we will explain the background of this new solicitation and what we envision for the future. We would like for you to review this new solicitation prior to the session for an interactive exchange of information. We welcome all comments.

If you will be unable to attend this session, we would appreciate that you forward any written comments to Mrs. Carol Rice at the above address or call her at 816-926-1837.

We look forward to seeing you at the 2nd Annual Domestic Industry Conference at the Adams Mark Hotel in Kansas City, Missouri.

/s/ George W. Aldaya
George W. Aldaya, Director

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER	PAGE 1 OF	
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE 10/05/00	4. ORDER NUMBER	5. SOLICITATION NUMBER PC5-Inv. 550	6. SOLICITATION ISSUE DATE 09/19/00		
7. FOR SOLICITATION INFORMATION CALL:		a. NAME Jane Doe	b. TELEPHONE NUMBER (No collect calls) 816-926-2655	8. OFFER DUE DATE/ LOCAL TIME 12/03/00 12:30pm		
9. ISSUED BY Commodity Credit Corporation Dairy & Domestic Operations Division P.O. Box 419205 Kansas City, Missouri 64141-6205		10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISAV. BUSINESS <input type="checkbox"/> 8(A) SIC: 2043 SIZE STANDARD: 1,000	11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input checked="" type="checkbox"/> IFB <input type="checkbox"/> RFP	12. DISCOUNT TERMS N/A		
15. DELIVER TO See Bid Schedules pages 4 through 8		16. ADMINISTERED BY CCC - Dairy & Domestic Operations Division				
17a. CONTRACTOR/OFFEROR	CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY Kansas City Finance Office/FOD/PCB/Stop 8578 P.O. Box 419205 Kansas City, Missouri, 64141-6205			
TELEPHONE NO.		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM				
<input checked="" type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER						
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES See Bid Schedule pages 4 through 8 <i>(Attach Additional Sheets as Necessary)</i>		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
25. ACCOUNTING AND APPROPRIATION DATA		26. TOTAL AWARD AMOUNT (For Govt. Use Only)				
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA		<input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED				
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA		<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED				
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.			29. AWARD OF CONTRACT: REFERENCE _____ OFFER <input type="checkbox"/> DATED _____ . YOUR OFFER ON SOLICITATION (BLOCK 5) INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR		31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)				
30b. NAME AND TITLE OF SIGNER (Type or print)	30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or print)		31c. DATE SIGNED		
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED		33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR		
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE		32c. DATE	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER	
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		42a. RECEIVED BY (Print)		
		42b. RECEIVED AT (Location)		42c. DATE REC'D (YY/MM/DD)		
				42d. TOTAL CONTAINERS		

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.

OMB NO.: 9000-0136
Expires: 09/30/98

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II CONTINUATION OF ANY BLOCK(S) FROM SF 1449

(1) BLOCK 15 DELIVER TO:

A. DELIVERY SCHEDULE

Deliveries must be made during the contracted delivery period and no extensions will be granted due to weekends or Federal holidays. Contractor delivering late on contracts must immediately notify the contracting officer of late deliveries and how soon delivery can be expected.

Time is of the essence in the performance of this Contract. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Contract.

The Kansas City Commodity Office shall issue a Notice(s) to Deliver at least seven days prior to the first day of each delivery period scheduled in the contract. Contractor shall deliver in accordance with instructions in the Notice(s) to Deliver. If a Notice to Deliver is issued less than seven days prior to the first day of the delivery period, the delivery period shall be extended by the number of days the Notice to Deliver is issued late. Contractor shall not be entitled to any extension of the delivery period unless it furnishes evidence satisfactory to the Agency that it was prepared to deliver during the delivery period.

The items required herein shall be delivered by the Contractor and received at the Destination not later than the corresponding date set forth in the following schedule.

B. PLACE OF DELIVERY

All line items (specified on the Schedules on pages 4 - 8) shall be delivered to the destination listed on the schedule for that line item.

(2) BLOCKS 19-24 SCHEDULE OF SUPPLIES AND PRICES - FIRM FIXED PRICE

This is a firm-fixed price contract for approximately 1,886,328 pounds of processed cereals. These cereals will be used in household feeding programs to support the nutritional needs of children, Native Americans, low-income families and the elderly.

The commodity delivered shall meet the Commercial Item Description (CID) required for:

- A. Cereals, Rolled Oats - CID # A-A-20090B.
- B. Cereals, Wheat, Quick-Cooking and Instant - CID #A-A-20108A.
The applicable CID may be obtained at <http://www.ams.usda.gov/fqa/cids.htm>.
- C. Bulgur - Meet the Official Grain Standards of the United States for wheat except mixtures of wheat of contrasting classes. The standard may be obtained at <http://www.usda.gov/gipsa>.
- D. All wheat product ingredients must be tested for vomitoxin and must not exceed one part per

million.

A. BID SCHEDULE

SET-ASIDE ITEM NUMBERS ARE THOSE IN THE 700-900 SERIES. Offers received from other than small business for small business set-aside numbers will not be considered unless CCC is unsuccessful in contracting for those item numbers under set-aside provisions. In that event, CCC may award the set-aside item number to other than small businesses.

IF SMALL BUSINESS ENTER "SB"	VENDOR NO.	VENDOR NAME			TOTAL NO. OF ITEMS OFFERED
CCC USE ONLY Bidder Number	PLANT NO.	LOCATION		PLANT NO.	LOCATION

INVITATION SUMMARY

The rolled oats to be delivered under this solicitation must meet the requirements of Type I of the Commercial Item Description A-A-20090B in Attachment A.
The farina delivered under this solicitation must meet the requirements of Type I of the Commercial Item Description A-A-20108A in Attachment B.

DELIVERY Month/Year	COMMODITY AND PACK SIZE	FIRST HALF POUNDS	SECOND HALF POUNDS	TOTAL POUNDS
April 2000	OATS, ROLLED 12/3 LB PKG	480,384	160,128	640,512
	OATS, ROLLED 12/42 OZ TUBE	131,040	98,280	229,320
	FARINA, WHEAT PRODUCT 24/14 OZ PKG	194,040	0	194,040
	APRIL TOTAL	805,464	258,408	1,063,872
May 2000	OATS, ROLLED 12/3 LB PKG	160,128	0	160,128
	OATS, ROLLED 12/42 OZ TUBE	98,280	32,760	131,040
	FARINA, WHEAT PRODUCT 24/14 OZ PKG	77,616	0	77,616
	MAY TOTAL	336,024	32,760	368,784
June 2000	OATS, ROLLED 12/3 LB PKG	120,096	80,064	200,160

	OATS, ROLLED	12/42 OZ TUBE	98,280	0	98,280
	FARINA, WHEAT PRODUCT	24/14 OZ PKG	155,232	0	155,232
	JUNE TOTAL		373,608	80,064	453,672
	INVITATION TOTAL		1,515,096	371,232	1,886,328

1. Enter price per cwt.: (EXAMPLE: 12.76) 2. Enter mode of transportation : T = Truck; R = Rail; P = Piggyback. 3. Enter packaging type: U = USDA; C = Commercial

ITEM NO.	PACK SIZE	FOB DEST STATE & CITY	ZIP CODE	DELIVERY PERIOD	QUANTITY (POUNDS)	DELIVERY INFO	BID PRICE	MODE	PACK-AGING TYPE
OATS, ROLLED									
001	12/3 Lb PKG	AK ANCHORAGE	995010000	04/01 - 15/00	40,032	TRUCK ONLY			
002	12/3 LB PKG	CA LONG BEACH	908130000	04/01-15/00	40,032	TRUCK ONLY			
003	12/3 LB PKG	CA LONG BEACH	908130000	05/01-15/00	40,032	TRUCK ONLY			
004	12/3 LB PKG	CA MERCED CA MODESTO ITEM TOTAL	954820000 953510000	05/01-15/00 05/01-15/00	20,016 20,016 40,032	TRUCK ONLY TRUCK ONLY			
005	12/42 OZ TUBE	CA VISALIA	932910000	04/01-15/00	32,760	IF RAIL TVRR			
006	12/42 OZ TUBE	CA VISALIA	932910000	05/01-15/00	32,760	IF RAIL TVRR			
007	12/42 OZ TUBE	CA VISALIA	932910000	06/01-15/00	32,760	IF RAIL TVRR			
008	12/3 LB PKG	IL CHICAGO	606510000	04/01-15/00	40,032	TRUCK ONLY			
009	12/3 LB PKG	LA BATON ROUGE LA NEW ORLEANS ITEM TOTAL	708050000 701260000	04/01-15/00 04/01-15/00	25,200 14,832 40,032	TRUCK ONLY TRUCK ONLY			
010	12/3 LB PKG	LA NEW ORLEANS	701260000	04/01-15/00	80,064	TRUCK ONLY			
011	12/3 LB PKG	LA NEW ORLEANS	701260000	04/16-30/00	120,096	TRUCK ONLY			
012	12/3 LB PKG	MO CARTHAGE	648360000	04/01-15/00	40,032	IF RAIL UP			
013	12/42 OZ TUBE	MO CARTHAGE	648360000	04/01-15/00	65,520	IF RAIL UP			
014	12/3 LB PKG	MO CARTHAGE	648360000	05/01-15/00	40,032	IF RAIL UP			
015	12/42 OZ TUBE	MO CARTHAGE	648360000	05/01-15/00	65,520	IF RAIL UP			

ITEM NO.	PACK SIZE	FOB DEST STATE & CITY	ZIP CODE	DELIVERY PERIOD	QUANTITY (POUNDS)	DELIVERY INFO	BID PRICE	MODE	PACK-AGING TYPE
016	12/3 LB PKG	MO CARTHAGE	648360000	06/01-15/00	40,032	IF RAIL UP			
017	12/42 OZ TUBE	MO CARTHAGE	648360000	06/01-15/00	65,520	IF RAIL UP			
018	12/3 LB PKG	ND BISMARK	585010000	04/01-15/00	40,032	TRUCK ONLY			
019	12/42 OZ TUBE	ND BISMARK	585010000	04/16-30/00	32,760	TRUCK ONLY			
020	12/3 LB PKG	NE OMAHA	681370000	06/16-30/00	40,032	IF RAIL UP NO RECIPROCAL SWITCHING			
021	12/3 LB PKG	NJ HILLSIDE	072050000	06/01-15/00	40,032	TRUCK ONLY			
022	12/3 LB PKG	NJ VINELAND	083600000	06/01-15/00	40,032	IF RAIL NS			
023	12/42 OZ TUBE	NM GALLUP	873010000	04/16-30/00	32,760	TRUCK ONLY			
024	12/42 OZ TUBE	NM GALLUP	873010000	05/16-31/00	32,760	TRUCK ONLY			
025	12/3 LB PKG	NY CENTRAL ISLIP	117220000	04/01-15/00	40,032	TRUCK ONLY			
026	12/3 LB PKG	OH COLUMBUS	432230000	04/01-15/00	80,064	TRUCK ONLY			
027	12/42 OZ TUBE	OK TAHLEQUAH	744650000	04/01-15/00	32,760	TRUCK ONLY			
028	12/42 OZ TUBE	SD MISSION SD PINE RIDGE ITEM TOTAL	575550000 577700000	04/16-30/00 04/16-30/00	8,505 24,255 32,760	TRUCK ONLY TRUCK ONLY			
029	12/3 LB PKG	UT CLEARFIELD UT SALT LAKE CITY ITEM TOTAL	840160000 841040000	06/16-30/00 06/16-30/00	7,992 32,040 40,032	IF RAIL UP TRUCK ONLY			
030	12/3 LB PKG	TX MCALLEN	785040000	05/01-15/00	40,032	TRUCK ONLY			
031	12/3 LB PKG	WV CHARLESTON	253010000	04/01-15/00	40,032	IF RAIL NS			
032	12/3 LB PKG	WY WORLAND	824010000	04/16-30/00	40,032	TRUCK ONLY			
COMMODITY TOTAL					1,459,440				
FARINA, WHEAT PRODUCT									
033	24/14 OZ PKG	CA VISALIA	932910000	05/01-15/00	38,808	IF RAIL TVRR			

ITEM NO.	PACK SIZE	FOB DEST STATE & CITY	ZIP CODE	DELIVERY PERIOD	QUANTITY (POUNDS)	DELIVERY INFO	BID PRICE	MODE	PACK-AGING TYPE
034		MI DETROIT	482380000	04/01-15/00	38,808	IF RAIL NS			
035		MO CARTHAGE	648360000	04/01-15/00	38,808	IF RAIL UP			
036		MO CARTHAGE	648360000	04/01-15/00	38,808	IF RAIL UP			
037		MO CARTHAGE	648360000	05/01-15/00	38,808	IF RAIL UP			
038		MO CARTHAGE	648360000	06/01-15/00	38,808	IF RAIL UP			
039		ND BISMARK	585010000	06/01-15/00	38,808	TRUCK ONLY			
040		NM GALLUP	837010000	04/01-15/00	38,808	TRUCK ONLY			
041		NM GALLUP	837010000	06/01-15/00	38,808	TRUCK ONLY			
042		NY CENTRAL ISLIP	117220000	04/01-15/00	38,808	TRUCK ONLY			
043		NY CENTRAL ISLIP	117220000	06/01-15/00	38,808	TRUCK ONLY			
COMMODITY TOTAL					426,888				
INVITATION TOTAL					1,886,328				

Subject to the terms and conditions of this solicitation, PC5-490, the undersigned offers to sell and deliver the following quantities at the prices quoted above.

Capacity Constraints YES ____ NO ____ (Capacity Constraints are not required) Quantity is limited to that offered, or limit to quantity as constrained below.				
TOTAL POUNDS CAN DELIVER BY MONTH AND DELIVERY PERIOD				
DELIVERY PERIOD	FIRST MONTH	SECOND MONTH	THIRD MONTH	OR TOTAL INVITATION
FIRST HALF				
LAST HALF				
TOTAL(S)				

OPTIONAL CONSTRAINTS									
PROCESSED CEREALS DELIVERY (DELY) MONTHS									
PRODUCT PACK CODE	DELY	Enter - Months			PRODUCT PACK CODE	DELY	Enter - Months		
		FIRST	SECOND	THIRD			FIRST	SECOND	THIRD
		MAXIMUM POUNDS					MAXIMUM POUNDS		
ROLLED WHEAT 12/3 801012	FIRST				FARINA 24/14 OZ 791014	FIRST			
	LAST					LAST			
	TOTAL					TOTAL			
ROLLED WHEAT 5/10 801070	FIRST				ROLLED OATS 12/42 OZ 755010	FIRST			
	LAST					LAST			
	TOTAL					TOTAL			
ROLLED WHEAT 50 LB 801050	FIRST				ROLLED OATS 12/3 755012	FIRST			
	LAST					LAST			
	TOTAL					TOTAL			
BULGUR 50 LB 763050	FIRST				ROLLED OATS 50 LB 755050	FIRST			
	LAST					LAST			
	TOTAL					TOTAL			

III. CONTRACT CLAUSES

(1) FAR 52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (MAY 1999)

(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. 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's rights to be paid amounts due as a result of performance of this contract, may be assigned 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).

(c) Changes. (See addendum on page 12)

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

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

(f) Excusable delays. (See addendum on page 12)

(g) Invoice. (See addendum on page 12)

(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. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Unless otherwise provided by an addendum to this contract, the Government shall make payment in accordance with the clause at FAR 52.232-34. 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.

(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. Deleted.

(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. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

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

- (1) The schedule of supplies/services.

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

ADDENDA TO FAR CLAUSE 52.212-4. These paragraphs overcome and have precedence over the applicable sections of the clause at FAR 52.212-4, in its entirety.

1. Addendum to paragraph (c) - Changes

Changes in the terms and conditions of this contract may be made only by written agreement of the parties except the Government may make unilateral changes within the scope of the contract in place of delivery or methods of shipment on any goods at any time. If any changes cause an increase or decrease in the cost, an equitable adjustment shall be made and modified in writing accordingly.

2. Addendum to paragraph (f) - Excusable delays

The Contractor shall be liable for default unless nonperformance is caused by an unforeseeable 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. All three of the above criteria shall be met to be determined an excusable delay. 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.

3. Addendum to paragraph (g) - Invoice

The Contractor shall submit an original invoice to the address designated in the contract to receive invoices. An invoice must include -

- (1) Name and address of the Contractor;
- (2) Invoice Date;
- (3) A signed and dated "Contractor's Invoice Certification" evidencing the date of delivery and quantity (units) delivered in good condition.
 - (a) This can be either the Form KC-269 (reverse side), OR
 - (b) A signed and dated commercial invoice evidencing the date of delivery and quantity (units) delivered in good condition which must include the following statement (either as a part of the commercial invoice or an attachment to):

"Contractor's Invoice Certification"

"I certify that this invoice presented for payment is true. This certification is executed with full

knowledge of the provision of 15 U.S.C. 714m(a), which provides a fine of not to exceed \$10,000 or imprisonment of not more than five years or both, for making any statement knowing it to be false, for the purpose of influencing in any way the action of the Commodity Credit Corporation, and with full knowledge of the provisions of 31 U.S.C. 3729 imposing civil liability upon any person who shall make or cause to be made a false, fictitious, or fraudulent claim against the United States.”

Authorized Signature

Date

(4) Commercial bill of lading.

(5) If the contractor does not complete a “Contractor’s Invoice Certification,” then proof of delivery as evidenced by one or more of the following documents will be required as part of the invoice package:

(a) A copy of the Bill of Lading signed and dated by the recipient.

(b) A copy of the commercial receipt evidencing delivery signed and dated by the recipient

(6) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice.

4. Time is of the Essence

Time is of the essence in the performance of this Contract. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Contract. Whenever it appears Contractor will not meet the delivery schedule, Contractor shall immediately notify Government of the reason and length of the delay. Contractor shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. Any additional cost caused by these requirements shall be born by Contractor. If Contractor is unable to meet the required delivery schedules for any reason, other than a change directed by Government, Government shall have the option to cancel this Contract, or fill such Contract or any portion thereof, from sources other than Contractor and to reduce Contractor’s Contract quantities accordingly at no increase in unit price, without any penalty to Government. This condition shall not limit Government’s rights under the default provision contained herein.

5. Liquidated Damages

If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages, for each calendar day of delay the sum of 25 cents per hundredweight. Liquidated damages under this section shall in no event exceed 100% of the total price specified of the contract value.

Alternatively, if delivery or performance is so delayed, the Government may terminate this contract in whole or in part. In that event, the Contractor shall be liable for fixed, agreed, and liquidated damages accruing until the time the Government may reasonably obtain delivery or performance of similar supplies or services. The liquidated damages shall be in addition to excess costs under the Termination for Cause clause.

The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of

causes beyond the control and without the fault or negligence of the Contractor.

Liquidated damages shall also apply to replacement deliveries, if such deliveries were not made within the agreed time for delivery.

6. Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

The Government suspends or debar contractors to protect the Government's interests. Contractors shall not enter into any subcontract in excess of \$25,000 with a contractor that has been debarred, suspended, or proposed for debarment unless the acquiring agency's head or designee determines there is a compelling reason for such action.

The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

A corporate officer or designee of the contractor shall notify the contracting officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (See FAR 9.404 for information on the List of Parties Excluded from Federal Procurement Programs). The notice must include the following:

- (1) The name of the subcontractor;
- (2) The contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement Programs;
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement Programs; and
- (4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interest when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

6. Electronic Commerce

A. Third-Party Network

The Contractor is responsible for choosing their own Internet Service Provider (ISP) to transmit, translate, or carry data between the Contractor and the Government. The Contractor is responsible for the cost of its third-party network.

The Government will not be responsible for any failure attributed to the transmission of the bid data prior to being accepted and stored on our web server, including but not limited to the following:

- (1) Any failure of the offeror's computer hardware or software.
- (2) Availability of your Internet Service Provider.
- (3) Delay in transmission due to the speed of your modem.
- (4) Delay in transmission due to excessive volume of Internet traffic.

B. SECURITY

The Contractor and the Government shall safeguard electronic data from tampering and unauthorized disclosure.

FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (FEB 2000)

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

(1) 52.222-3, Convict Labor (E.O. 11755).

(2) 52.225-13, Restrictions on Certain Foreign Purchases (E.O.'s 12722, 12724, 13059, and 13067).

(3) 52.233-3, Protest after Award (31 U.S.C. 3553).

(b) The Contractor agrees to comply with the FAR clauses in this paragraph (b) which 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 or components:

[Contracting Officer shall check as appropriate.]

___ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

___ (2) 52.219-3, Notice of Total HUBZone Small Business Set-Aside (Jan 1999).

X___ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).

___ (4)(i) 52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

___ (ii) Alternate I to 52.219-5.

___ (iii) Alternate II to 52.219-5.

X___ (5) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)).

X___ (6) 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637(d)(4)).

X___ (7) 52.219-14, Limitations on Subcontracting (15 U.S.C. 637(a)(14)).

___ (8)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii)___ Alternate I of 52.219-23.

___ (9) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

___ (10) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

X___ (11) 52.222-21, Prohibition of Segregated Facilities (Feb 1999)

X___ (12) 52.222-26, Equal Opportunity (E.O. 11246).

X___ (13) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

X___ (14) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

X___ (15) 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

___ (16)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).

___ (ii) Alternate I of 52.223-9 (42.U.S.C. 6962(i)(2)(C)).

X___ (17) 52.225-1, Buy American Act--Balance of Payments Program--Supplies (41 U.S.C. 10a - 10d).

___ (18)(i) 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program (41 U.S.C. 10a - 10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

___ (ii) Alternate I of 52.225-3.

___ (iii) Alternate II of 52.225-3.

___ (19) 52.225-5, Trade Agreements (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

___ (20) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

___ (21) 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).

___ (22) 52.225-16, Sanctioned European Union Country Services (E.O. 12849).

___ (23) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (31 U.S.C. 3332).

X___ (24) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (31 U.S.C. 3332).

___ (25) 52.232-36, Payment by Third Party (31 U.S.C. 3332).

___ (26) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).

___ (27)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

___ (ii) Alternate I of 52.247-64.

(c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, which 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 or components:

[Contracting Officer check as appropriate.]

___ (1) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.).

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

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

___ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act--Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

___ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, et seq.).

___ (6) 52.222-50, Nondisplacement of Qualified Workers (Executive Order 12933).

(d) Comptroller General Examination of Record. The Contractor agrees to 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) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components--

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);
- (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and
- (4) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

IV CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS

LIST OF ATTACHMENTS

<u>Identifier</u>	<u>Title/Description</u>	<u>Pages</u>
A	Commercial Item Description A-A-20090B dated September 20, 1996, for Cereals, Rolled Oats	
B	Commercial Item Description A-A-20108A dated September 25, 1997, for Cereals, Wheat, Quick-Cooking and Instant	
C	Official Grain Standards of the United States for wheat	

Attachments listed above are located at the end of this solicitation.

IV. SOLICITATION PROVISIONS

(1) FAR 52.212-1 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS

(a) Standard industrial classification (SIC) code and small business size standard. The SIC 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. (See addendum on page 21)

(c) Period for acceptance of offers. (See addendum on page 21)

(d) Product samples. Deleted.

(e) Multiple offers. Deleted.

(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. (See addendum on page 21)**

(i) **Availability of requirements documents cited in the solicitation. (See addendum on page 22)**

(j) **Data Universal Numbering System (DUNS) Number. Deleted.**

(2) **ADDENDA TO FAR CLAUSE 52-212-1 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS.** These paragraphs overcome and have precedence over the applicable sections of the clause at FAR 52.212.1, in its entirety.

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

Offers, modifications, withdrawals of offers, and price adjustments must be submitted by using the Domestic Electronic Bid Entry System (DEBES) and received by the date and local time specified in the invitation for receipt of offers. The time of receipt will be determined and recorded by DEBES. Submission of the above by any means other than DEBES will be determined nonresponsive.

A. **COMPUTER SOFTWARE REQUIREMENTS**

- (1) Browser requirement: Netscape 4.07 or above (OR) Internet Explorer 5.0 or above.
- (2) Encryption: Browser capable of handling 128 bit encryption.
- (3) Proxy servers: Vendors must set up their proxy server to allow access to the Internet DEBES port.

B. **ACCESS TO DEBES**

- (1) Port location is: <https://pcsd.usda.gov:3077/mdbc1000.exe?>
- (2) Government will provide the vendor with an ID number and the initial password needed to access DEBES.

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

The offeror agrees to hold the prices in its offer firm through the contract award date and time.

3. **Addendum to paragraph (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 item quantities less than those specified. The Government reserves the right to make an award on any item for a quantity more or less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

4. Addendum to paragraph (i) - Availability of requirements documents cited in the solicitation.

The commercial item descriptions (CID) cited in this solicitation may be obtained at:

<http://www.ams.usda.gov/fqa/cids.htm>. The Official Grain Standards of the United States referred to in this solicitation may be obtained at <http://www.usda.gov/gipsa>.

5. Eligibility of Offerors. To be pre-approved to submit a first offer, potential offerors must:

A. Submit a completed SF-129 - Solicitation Mailing List Application and SF-3881 - ACH Vendor/Miscellaneous Payment Enrollment Form to the contracting officer. SF forms can be obtained at <http://www.gsa.gov/forms>.

B. Affirmatively demonstrate responsibility as defined in Federal Acquisition Regulation 9.104-1. Submit a current financial statement prepared by an independent Certified Public Accountant or an independent public accountant for review. A pre-award survey may be performed for the purpose of evaluating offeror's ability to perform the contract.

C. Meet the requirements of the Total Quality Systems Audit (TQSA) Program. Offerors shall only be allowed to offer from plants that have been audited under TQSA and have received a score of at least 70 points. The TQSA Supplier Guidelines setting forth the TQSA requirements may be obtained at <http://www.fsa.usda.gov/daco/TQSA/tqsa.htm>.

D. Submit the Representations and Certifications, FAR Clause 52.212-3, and annually thereafter. By submitting an offer, the offeror certifies and warrants that the Representations and Certifications on file contain the current status of the offeror. Offerors are responsible for updating the Representations and Certifications as may be necessary prior to submission of an offer.

6. Responsibility and Past Performance of Offerors. Offerors are cautioned not to bid on product quantities exceeding a level that can reasonably be expected to deliver in accordance with the contract schedule. The offeror must certify to timely performance on current contracts prior to submitting an offer. A determination that the late performance is beyond the control or negligence of the contractor will be made by the contracting officer prior to bid opening. An offeror may be deemed nonresponsible if the offeror is delivering late on contracts with USDA and the late delivery is not due to causes beyond the contractor's control. This provision, as it pertains to small business, is a deviation from FAR 9.103(b) and Subpart 19.6.

7. Shipment and Delivery. Contractors are required to make TWO notifications for each shipment.

A. The State Agency, "Consign To" party shown on the Notice to Deliver (N/D), must be FAXED on the date of shipment.

B. The receiving warehouse, "Care Of" party shown on the N/D, must be called 24 hours in advance to schedule an unloading appointment. This is not required for rail shipments. Contractors must notify the contracting officer in advance if deliveries will not be made by the final delivery date under the contract.

(3) FAR 52.212.2 EVALUATION - COMMERCIAL ITEMS (JAN 1999). These paragraphs overcome and have precedence over the applicable sections of the clause at FAR 52.212.2, in its entirety.

- (a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other price-related factors considered.
- (b) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.
- (c) The Government will award commodities to eligible HUBzone vendors in accordance with the provisions of the Small Business Reauthorization Act of 1997, as amended by the Fiscal Year 2000 Agricultural Appropriations Act.

(4) FAR 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS COMMERCIAL ITEMS (JAN 1999)

(a) Definitions. As used in this provision:

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

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

"Women-owned small business concern" means a small business concern--

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

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

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

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

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

(3) Taxpayer Identification Number (TIN).

* TIN: _____.

* TIN has been applied for.

* TIN is not required because:

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

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

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

(4) Type of organization.

* Sole proprietorship;

* Partnership;

* Corporate entity (not tax-exempt);

* Corporate entity (tax-exempt);

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

* Foreign government;

* International organization per 26 CFR 1.6049-4;

* Other _____.

(5) Common parent.

* Offeror is not owned or controlled by a common parent;

* Name and TIN of common parent:

Name _____.

TIN _____.

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

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

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

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

Note: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

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

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

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

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

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

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

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

(Check one of the following):

Average Annual Gross

Number of Employees Revenues

50 or fewer \$1 million or less

51--100 \$1,000,001--\$2 million

101--250 \$2,000,001--\$3.5 million

251--500 \$3,500,001--\$5 million

501--750 \$5,000,001--\$10 million

751--1,000 \$10,000,001--\$17 million

Over 1,000 Over \$17 million

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

(i) General. The offeror represents that either--

(A) It * is, * is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration

(PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

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

(ii) * Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(7)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:_____.]

(d) Representations required to implement provisions of Executive Order 11246--(1) Previous contracts and compliance. The offeror represents that--

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

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

(2) Affirmative Action Compliance. The offeror represents that--

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

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

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) Buy American Act--Balance of Payments Program Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act--Balance of Payments

Program--Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act--Balance of Payments Program--Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line Item No Country of Origin

Line Item No	Country of Origin

[List as necessary]

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

(g)(1) Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":

NAFTA Country or Israeli End Products:

Line Item No Country of Origin

Line Item No	Country of Origin

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No Country of Origin

[List as necessary]

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

(2) Buy American Act--North American Free Trade Agreements--Israeli Trade Act--Balance of Payments Program Certificate, Alternate I (Feb 2000). If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":

Canadian End Products:

Line Item No.

(List as necessary)

(3) Buy American Act--North American Free Trade Agreements--Israeli Trade Act--Balance of Payments Program Certificate, Alternate II (Feb 2000). If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":

Canadian or Israeli End Products:

Line Item No Country of Origin

Line Item No	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

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

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

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

Other End Products:

Line Item No Country of Origin

Line Item No	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). The offeror certifies, to the best of its knowledge and belief, that--

(1) The offeror and/or any of its principals * are, * are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) * Have, * have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and * are, * are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

Alternate I (Oct 1998). As prescribed in 12.301(b)(2), add the following paragraph (c)(8) to the basic provision:

(8) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(2) or (c)(7) of this provision.) [The offeror shall check the category in which its ownership falls]:

_____ Black American.

_____ Hispanic American.

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

____ Individual/concern, other than one of the preceding.

Alternate II (Oct 1998). As prescribed in 12.301(b)(2), add the following paragraph (c)(7)(iii) to the basic provision:

(iii) Address. The offeror represents that its address * is, * is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. "Address," as used in this provision, means the address of the offeror as listed on the Small Business Administration's register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR part 124, subpart B. For joint ventures, "address" refers to the address of the small disadvantaged business concern that is participating in the joint venture.

Alternate III (Jan 1999). As prescribed in 12.301(b)(2), add the following paragraph (c)(9) to the basic provision:

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

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

(ii) It * is, * is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(9)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(5) ADDENDA TO FAR CLAUSE 52.212.3

A. The Representations and Certifications are to be submitted annually prior to submission of an offer. By submitting an offer, the offeror certifies and warrants that the Representations and Certifications on file contain the current status of the offeror. Offers are responsible for updating the Representations and Certifications as

may be necessary prior to submission of an offer.

B. The undersigned has executed these Representations and Certifications on this _____ day of _____, _____.
(Month) (Year)

NAME OF FIRM _____
SIGNATURE _____ TITLE _____
TYPED NAME _____

REPRESENTATIVES AUTHORIZED TO SUBMIT OFFERS		
Signature	Typed Name	Title

STREET ADDRESS _____
CITY _____ STATE _____ ZIP CODE _____
TELEPHONE NUMBER _____ FAX NUMBER _____
EMAIL ADDRESS _____

These Representations and Certifications concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under the United States Codes, including Title 18 U.S.C., Section 1001 and Title 15, U.S.C., Section 714M.