

**UNITED STATES  
DEPARTMENT OF  
AGRICULTURE**

**COMMODITY  
CREDIT  
CORPORATION**

**KANSAS CITY  
COMMODITY OFFICE  
P.O. BOX 419205  
KANSAS CITY, MO 64141-6205**

**ANNOUNCEMENT OTHC-1**

**SALE OF FOOD COMMODITIES  
FOR USE OTHER THAN HUMAN CONSUMPTION**





**ANNOUNCEMENT OTHC-1  
SALE OF FOOD COMMODITIES  
FOR USE OTHER THAN HUMAN CONSUMPTION**

**1. GENERAL**

A. Invitation for Offers

- (1) The Commodity Credit Corporation (CCC) will from time to time issue an invitation for offers under this announcement to sell food commodities (hereinafter referred to as product) for use other than human consumption.
- (2) The invitation will specify the office to which offers are to be submitted, the closing time for receipt of offers, and provisions applicable to the proposed procurement which are in addition to or different from those set forth herein.

B. Terms and Conditions

- C. The invitation will specify the quality, quantities, location(s), container size, the closing time for receipt of offers, and provisions applicable to the proposed sale.
- (2) Offerors are cautioned to read all terms and conditions of this announcement, the appendixes to this announcement, and the invitation.

**2. ELIGIBILITY OF OFFERORS**

To be eligible to submit an offer under this announcement, the offeror:

- A. Shall set forth the complete business name and address of offeror. An offer mailed or hand delivered shall be signed by a person authorized to execute contracts on behalf of offeror. CCC may require a power of attorney or other documentary evidence of the authority for a person to execute the contract in the name of offeror.

**3. SUBMISSION OF OFFERS**

A. How to Submit Offers

- (1) Offers must be submitted by FAX, regular mail, express mail, or hand delivered..
- (2) Envelopes containing the offers are to be sealed and marked with the name and address of the offeror in the upper left corner. Offers submitted by express mail, must be sealed inside a second envelope. All envelopes are to have Optional Form OF-17 Offer Label, filled in and attached or must be plainly marked with the following statement: **DO NOT OPEN UNTIL PRESCRIBED TIME UNDER ANNOUNCEMENT OTHC-1, INVITATION (Enter Appropriate Invitation Number.)** If overnight/express service is utilized, this statement must be printed clearly on the outer express envelope, not the mailing label.

- (3) Modifications or withdrawals of offers may be submitted by mail, facsimile, or hand delivered.
- (4) Modifications and withdrawals of offers may be submitted via facsimile at the offeror's risk. CCC will not be responsible for any failure attributed to the transmission or receipt of facsimile changes including, but not limited to the following:
  - (a) Receipt garbled or incomplete.
  - (b) Availability or condition of the receiving facsimile equipment.
  - (c) Incompatibility between the sending and receiving equipment.
  - (d) Delay in transmission or receipt of price changes.
  - (e) Failure of the bidder to properly identify the information.
  - (f) Illegibility of the information.
  - (g) Security of data.
- (5) Changes by facsimile must contain the required signatures.

**B. Where and When to Submit Offers**

- (1) Offers, modifications, or withdrawals of offers must be submitted to the Kansas City Commodity Office (KCCO) and received by the date and local time specified in the invitation for receipt of offers. In the event such date falls on a business day when KCCO is officially closed, offers must be received by the specified time on the next succeeding business day.
- (2) Whether an offer, modification, or withdrawal is received timely will be determined, in the case of regular mail and express mail, by the time stamp of the Kansas City Commodity Office (KCCO) mailroom.

Offers, modifications, or withdrawals of offers must be submitted to:

Kansas City Commodity Office  
Export Bid Box, Invitation 1, Stop 8738  
Export Operations Division  
P.O. Box 419205  
Kansas City, MO 64141-6205

Users of the various express deliver services are to address correspondence to:

Kansas City Commodity Office  
Export Bid Box, Invitation 1, Stop 8738  
Export Operations Division  
6501 Beacon Drive  
Kansas City, MO 64133-4676

**4. INDEPENDENT PRICE CERTIFICATION**

In submitting an offer, offeror certifies, and in the case of a joint offer each party thereto certifies as to its own organization, that:

The prices stated in the offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other offeror or with any competitor;

Unless otherwise required by law, the prices quoted in the offer have not been knowingly disclosed by offeror and will not knowingly be disclosed by offeror prior to opening of offers by CCC, directly or indirectly, to any other offeror or to any competitor; and

No attempt has been made or will be made by offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

## **5. ACCEPTANCE OF OFFERS**

- A. CCC will notify successful offerors on the date specified in the invitation. The date of acceptance by CCC will be the contract date.
- B. In addition to the price, factors considered in accepting offers will include the total cost to the Government and the responsibility of the offeror.
- D. CCC may accept or reject any or all offers, or portions thereof.
- E. CCC reserves the right to refuse to consider an offer if CCC does not have adequate information to determine the responsibility of offeror, financially or otherwise, to meet contract obligations contemplated in this Announcement. If a prospective offeror is in doubt as to whether CCC is acquainted with the offeror's financial responsibility, the offeror should either submit a financial statement to the KCCO before making an offer or communicate with that office to determine whether such a statement is desired. When satisfactory financial responsibility has not been established, CCC also reserves the right to consider an offer only after receipt from offeror of a certified or cashier's check, irrevocable commercial letter of credit, or other security (acceptable to CCC) assuring that if the offer is accepted, the offeror will pay for the product as provided in section 9 of this Announcement. The security for the offer will be returned to an unsuccessful offeror as soon as practicable after the opening of offers, and to a successful offeror after payment for the commodities.

## **6. PROVISIONS OF CONTRACT**

- A. The contract consists of:
  - (1) Contractor's offer.
  - (2) CCC's acceptance.
  - (3) The applicable invitation.
  - (4) This announcement.

If the provisions of this announcement and the invitation are not consistent, the provisions of the invitation will prevail.

- B. No interpretation or amendment of this announcement is valid or enforceable unless such interpretation or amendment is in writing and executed by the contracting officer.

## **7. QUALITY, WARRANTY, AND COMPLIANCE**

CCC's acceptance of offers shall be on the basis of the entire invitation line item.

It is expressly understood that the commodities sold under this Announcement by CCC are not suitable for human consumption.

By submitting an offer, the offeror warrants that the commodity will not be used or resold for human consumption and agrees to handle the commodity in accordance with the requirements of this Announcement and all applicable Federal, state, and local health codes.

## **8. FINANCIAL ARRANGEMENTS**

Within 10 business days after the date of the contract, payment for the commodity must be received in KCCO by one of the following methods:

- (1) Wire transfer of funds from Contractor's bank as shown on acceptance wire.
- (2) Certified check or cashier's check made payable to CCC.
- (3) Irrevocable commercial letter of credit, acceptable to CCC, upon which CCC will draw drafts in accordance with the terms of the letter of credit as deliveries are made.

If payment has not been made within 10 business days after the date of contract, interest at the rate per annum specified in the monthly sales list in effect at the time the offer is accepted by CCC shall be paid by the Contractor to CCC from the end of such 10 day period to the date of payment.

At the election of CCC, if the Contractor fails to make arrangements for payment in accordance with this section, all of the Contractor's rights under the contract may be terminated by CCC, and CCC may proceed against the Contractor to recover any damages CCC may have sustained.

## **9. DELIVER, TRANSFER OF TITLE, AND STORAGE COSTS**

CCC will make the commodity available to the Contractor at the named point(s) of storage in the contract as soon as possible after payment is received by CCC. If financial arrangements are by letter of credit, CCC will issue a Notice to Deliver authorizing the release of the commodity to the Contractor in accordance with the terms of the letter of credit. If financial arrangements are other than a letter of credit, CCC will issue to the warehouseman a Notice to Deliver to transfer the commodity to the Contractor once payment is received.

CCC shall be responsible for any storage charges accruing up to and including the date of the contract. Any storage, handling, or other warehouse charges accruing thereafter shall be for the account of the Contractor.

Title and risk of loss shall pass to the Contractor on the date of acceptance by CCC. It is further agreed that any loss of, or damage to the commodity after the award date, shall be the responsibility of the Contractor.

## **10. OBLITERATING MARKINGS**

The appearance in commercial or other channels of any labels, bags, containers, or packaging bearing government markings may cause Agency expense in determining whether commodities have been diverted from authorized use and in answering inquiries. Contractor therefore agrees to delete or obliterate, or arrange for the deletion or obliteration, of any such markings on any labels, bags, containers, or packaging. If any labels, bags, containers, or packages appear in commercial or other channels without deletion or obliteration of such markings or labels, contractor agrees to pay the first \$5,000 of the cost of any resulting investigation undertaken by

agency.

## 11. CONTINGENT FEES

Offeror warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or bona fide established commercial agencies maintained by the offeror for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right to annul the contract without liability or, in its discretion, to require the offeror to pay in addition to the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## 12. DISPUTES

- A. Contracts awarded under this invitation are subject to the Contract Disputes Act of 1978 (the Act), as amended (41 U.S.C. 601-613).
- B. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this Section.
- C. "Claim" as used in this Section, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by paragraph (D) of this Section. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this Section, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- D. A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

The Contractor shall provide the following certification when submitting any claim exceeding \$100,000: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

- E. For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- F. The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- G. If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is

presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

- H. The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- I. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

#### **14. ASSIGNMENTS**

This contract, any interest therein, or any rights or claims arising thereunder, shall not be assigned in whole or in part by the Contractor without prior written approval of CCC. Any assignment made without prior written approval of CCC shall be void.

#### **15. INQUIRIES**

Inquiries pertaining to USDA-1 and this announcement should be directed to:

Kansas City Commodity Office  
Export Operations Division  
Stop Code 8738  
P.O. Box 419205  
Kansas City, MO 64141-6205  
816-926-6045

*/s/ Patricia Jennings, Acting*

George W. Aldaya  
Director  
Kansas City Commodity Office

**APPENDIX 1**

**Sales Offer Form  
ANNOUNCEMENT OTHC-1  
Sale of Food Commodity for Use Other  
Than Human Consumption**





	Announcement	Invitation No.	Vendor Name	Page
Sales Offer Form				

Subject to the terms and conditions of this invitation and Announcement OTHC-1, the undersigned offers to purchase CCC-owned commodity at the prices quoted below.

Enter all quantities in price per metric ton:

Line item 1: Green Peas	Bid price:	Line item 4: Lentils	Bid price:
Line item 2: Yellow Peas	Bid price:	Line item 5: Lentils	Bid price:
Line item 3: Buckwheat	Bid price:	Line item 6: Kidney Beans	Bid price:

#### 1. INDEPENDENT PRICE CERTIFICATION

Check appropriate certification for either subparagraph 4.B. OR 4.B.(1) and (2) of Announcement OTHC-1

The offeror is the person in their organization responsible within that organization for the decision as to the prices being offered and has not participated, and will not participate, in any action contrary to subparagraphs A.(1) through A.(3) of Announcement OTHC-1, OR

The offeror is not the person in their organization responsible within that organization for the decision as to prices being offered but has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to subparagraphs A.(1) through A.(3) of this section, and as their agent does hereby so certify; and

The offeror has not participated, and will not participate, in any action contrary to subparagraphs A.(1) through A.(3) of Announcement OTHC-1.

It is expressly understood that the commodities sold under this Announcement by CCC are not suitable for human consumption. By submitting an offer, the offeror warrants that the commodity will not be used or resold for human consumption and agrees to handle the commodity in accordance with the requirements of this Announcement and all applicable Federal, state, and local health codes.

Signature:

Name and Title: