

Effective Date: **June 2008**

**AGRICULTURAL MARKETING SERVICE  
MASTER SOLICITATION  
FOR SHELL EGG PURCHASES**

**For Distribution to Eligible Outlets**



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This solicitation, called the Master Solicitation, is used by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS) to procure commodities for the National School Lunch Program and other Federal Food and Nutrition Programs. The Master Solicitation will provide general guidance to potential bidders and/or offerors.

## I. INSTRUCTIONS TO BIDDERS

A. USDA will periodically issue Solicitations/Invitations for Bid (IFB) under this Master Solicitation for various commodities under domestic food nutrition assistance programs. Specifications and program requirements will be further defined in the appropriate commodity supplement to this Master Solicitation and are incorporated herein and made a part hereof for specific requirements.

B. Awards will be made following the principles in the Federal Acquisition Regulation (FAR), and the Agriculture Acquisition Regulations (AGAR). The Solicitations/IFBs will specify the commodity, the bid date, the delivery period, the destinations, estimated quantities, the closing time for receipt of bids, and any provisions, terms, and conditions applicable to the proposed procurement which are in addition to or different from those contained in the Master Solicitation. Bidders are cautioned to carefully read this Master Solicitation, the applicable IFB, and the applicable Specification. The full texts of the applicable FAR provisions and clauses incorporated into the contract can be found at <http://www.acquisition.gov/comp/far/index.html>.

C. Bid 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 USDA's option, at the shipping points named in the Solicitation/IFB. To submit bids, a company must be on the Qualified Vendors List. Contact the Contracting Officer for requirements, or visit: <http://www.ams.usda.gov/cp/resources.htm>.

### D. Annual Representations and Certifications

#### 1. Central Contractor Registration (CCR) and Online Representations and Certifications (ORCA) Application.

Contractor must be registered with the Central Contractor Registration (CCR) as prescribed in FAR 4.1104 and the Online Representations and Certifications Application (ORCA). Bidder must certify with each bid that its company is registered with both the CCR and ORCA. The CCR can be accessed at [www.ccr.gov](http://www.ccr.gov) and the ORCA at <http://orca.bpn.gov>.

#### 2. The 8(a) Program

For the purposes of contracts made under the 8(a) program, FAR subpart 19.8, reference to "Contractor," in all USDA contract documents, means the 8(a) firm. In accordance with the Interagency Agreement as authorized under FAR 19.800(c), the Small Business Administration

(SBA) has delegated responsibility to USDA for the administration of contracts 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.

E. Domestic Products

All products used in fulfilling contracts awarded must be of 100 percent domestic origin, meaning that it was produced and processed from products, including maltodextrin (products) which were produced, raised, and processed only in the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as “the United States”). If the Contractor processes or handles products originating from sources other than the United States, the Contractor must have an acceptable identification and segregation plan for those products to ensure they are not used in commodities purchased under the Master Solicitation. 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.

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.

Domestic verification requirements must be included in the contractor’s technical proposal, if applicable. Otherwise, the attached form (EXHIBIT 2) must be completed for each contract awarded and, prior to performance in this program, must be presented to an AMS representative, the Contracting Officer, or agent thereof upon request.

F. Food Defense Requirements

Potential contractor(s) and subcontractor(s) must have a documented and operational food defense plan that provides for the security of a plant’s production processes and includes the storage and transportation of pre-production raw materials and other ingredients and post-production finished product. The plan shall address the following areas: (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). The food defense plan shall be made available to USDA, Agricultural Marketing Service (AMS) Auditor immediately upon request. Verification of the Food Defense Program at the processing, storage, and distribution facility will be conducted by USDA/AMS Auditor.

G. Loading and Sealing of Vehicles

Loading must be in accordance with good commercial practices and the sealing must be done at origin under the supervision of a certification agent. Therefore, all delivery units—truck lot and less-than-truck lot (LTL) quantities—must be secured at all times prior to unloading with tamper resistant, serially numbered, high security seals. Suppliers of commodities, products and/or services shall be responsible for placing seal(s) on all doors of each transportation conveyance upon completion of loading or servicing. Seals shall be serially numbered, barrier-type and meet

the American Society for Testing and Materials (ASTM) standards (F-1157-04). Seals shall be 1/8<sup>th</sup> inch diameter cable, high security bolt, or equivalent. The contractor must maintain a record of each seal number used per truck lot and LTL delivery unit. Additionally, the contractor must ensure that the applicable seal identification number is on each bill of lading, shipment manifest, certificate, or delivery documents for each delivery destination.

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

1. Railcar. Each railcar must be sealed. The contractor is responsible for arranging for railcar deliveries of more than one delivery unit so that each delivery unit contained in the same railcar can be completely separated and sealed.

2. Truck or Piggyback. Truck or piggyback shipments must be sealed at origin. A delivery unit shipped by truck or piggyback which includes split deliveries to multiple destinations will require sealing after each drop in accordance with I.G. of this Master Solicitation.

## II. SUBMISSION OF BIDS

Bids must be submitted via the Internet by accessing the Domestic Electronic Bid Entry System (DEBES) (see EXHIBIT 3 for browser requirements). Bidders may request vendor DEBES identifications and passwords by contacting the Contracting Office. Bids submitted by any means other than DEBES will be considered nonresponsive.

Access the DEBES website at: <https://pcsd.usda.gov:3077/mdbc1000.exe?>

Once connected to DEBES, follow the online procedures. Click on the "Help" button for detailed instructions on using the system, or contact the Contracting Officer for assistance.

AMS 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 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.

Bidders are advised to allow sufficient time to input bids on the date of bid opening due to high volume of internet traffic.

Bids, modifications, or withdrawals of bids must be received in DEBES by the time prescribed in the applicable Invitation. Whether a bid, modification, or withdrawal is received within the time limitation will be determined by the latest time recorded in DEBES.

All sections of the bid form must be completed, including prices and constraints. Complete the certifications using the following as a guide. (See EXHIBIT 1 of this Master Solicitation for an example of a bid.)

1. Bid is made subject to the Master Solicitation dated June 2008; the Specification(s); Invitation No. \_\_\_\_; and the FAR/AGAR.
2. Furnish the name, complete mailing address, and telephone number of office or person to receive shipping and delivery instructions. NOTE: FURNISH ADDRESS WITH FIRST BID; THEREAFTER, ENTER "SAME" IF INFORMATION HAS NOT CHANGED. ONLY ENTER UPDATED INFORMATION AS NECESSARY.
3. Timely Performance Certification. All products required under any existing USDA contract(s) or subcontract(s) with a not-later-than delivery date prior to this bid opening have been delivered. Choose one:
  - (a) Have
  - (b) Have not
  - (c) Have not, but has notified the Contracting Officer
  - (d) No existing contracts
4. Bidder (HAS) registered in the Central Contractor Registration (CCR). Furnish the expiration date of registration.
5. Bidder (HAS) registered with the Online Representations and Certifications Application. Furnish the expiration date of registration.
6. Bidder 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).
7. Furnish name, title, fax number, phone number and email 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).

### III. CONTRACT AWARD

Firm fixed price contracts will be awarded to the responsible bidder(s) whose offer conforms to the Invitation for Bid, Master Solicitation and commodity specification. Contract(s) will be awarded to responsible bidder(s) whose offer conforms to the Master Solicitation and the applicable IFB and whose bid(s) are most advantageous to the Government in terms of, but not limited to, price (including any transportation costs) and quantity requirements. Award(s) will be made on the least price combination of quantity being awarded. Award(s) documents will be faxed on the date specified in the IFB. A notice of award will be issued in the form of a Food Purchase Report or other public notice posted at the Department's Office of Public Affairs, News Division, after award, on the day of acceptance. After award information is posted, inquiries may be made to the Contracting Officer.

Award(s), as specified above, will result in a binding contract without further action by either party. Information on awards is also available electronically through the commodity procurement website at <http://www.ams.usda.gov/cp> after award.

#### IV. ORDER OF PRECEDENCE AND INCORPORATED TEXT

The contract will incorporate this Master Solicitation including; the applicable IFB; the Specification; the Contractor's bid; and the award document. If the contract documents are inconsistent or contradictory, the following order of precedence will prevail: IFB, Master Solicitation, and Commodity Specification(s).

#### V. CONTRACT COMPLIANCE

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

#### VI. SHIPMENT AND DELIVERY

Shipment and delivery must be made in accordance with this Master Solicitation; the Specification; the applicable Invitation; and the Notice to Deliver issued to the contractor by the Kansas City Commodity Office (KCCO) following award. The Contractor must closely follow delivery notification instructions contained in the Notice to Deliver. Such notification of delivery is vital, particularly in cases of minimal transit time.

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

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

##### A. Change in Place or Manner of Shipment or Delivery

##### 1. F.O.B. at Origin

If the commodity price is on the basis of delivery F.O.B. cars or trucks at origin and Contractor requests a change in the shipping point named in the contract and such request is approved by USDA, any additional cost of transportation and related services shall be deducted from payments otherwise due Contractor and any savings shall accrue to USDA. For F.O.B. Origin prices, the government will add the cost of transportation to the offer price in evaluation and award.

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

If the commodity price is on the basis of delivery F.O.B. cars or trucks at destination or F.A.S. vessel at designated ports and if USDA orders delivery of the commodity in a manner or to

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

#### B. Notice to Deliver

The Kansas City Commodity Office shall issue a Notice(s) to Deliver at least 7 days prior to the first day of each period scheduled in the contract for the delivery of a specified quantity of the commodity. Any modification of such period must be made by agreement with the applicable Contracting Office. Such period or any modification thereof is hereinafter called "the contract delivery period." The date on which the Notice to Deliver is issued shall be shown thereon. Contractor shall deliver in accordance with instructions in the Notice(s) to Deliver, except that (1) if a Notice to Deliver is issued less than 7 days prior to the first day of the contract delivery period, such delivery period and each subsequent consecutive delivery period under the contract directly affected by the delay shall be extended by the number of days such Notice is issued late; and (2) in any event, Contractor shall be allowed the number of business days contained in the period specified in the contract for delivery of the contract quantity, beginning 7 days after the Notice to Deliver is issued. Notwithstanding the foregoing, Contractor shall not be entitled to any extension of the contract delivery period under this clause unless it furnishes evidence satisfactory to the Contracting Officer that it was prepared to deliver during the contract delivery period.

The commodity shall be delivered by Contractor in the manner (F.A.S. vessel, F.O.B. cars, etc.) and at the point(s) of delivery, as required by the contract, pursuant to delivery instructions issued by the Kansas City Commodity Office. Delivery shall not be made before receipt of delivery instructions, or before the time the commodity has been inspected and found to meet specifications.

Immediately on delivery, Contractor shall, in accordance with instructions on the Notice to Deliver, notify USDA, or consignee, or both, of the delivery.

#### C. Early Delivery

The Contractor may deliver early upon the approval of the KCCO. Approval may be obtained by telephoning (816) 926-6124. Approval is contingent on the recipient's concurrence to accept early delivery and upon AMS personnel being available to perform any necessary checkloading and final acceptance duties.

## VII. LIABILITY FOR LOSSES DUE TO DETERIORATION, SPOILAGE, OR RECALL

### A. Loss Due to Deterioration or Spoilage

Contractor shall reimburse USDA for all losses due to deterioration or spoilage sustained by USDA for which Contractor is responsible, but only if such losses are discovered within a reasonable time, as determined by USDA, after delivery. 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 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 Contractor. In lieu of reimbursing USDA, 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.

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

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

## VIII. INVOICES AND PAYMENT

Invoices requesting payment must be submitted separately by the Contractor to the Fiscal Division, Kansas City Commodity Office. Invoices for payment must be made on the invoice portion of the Notice to Deliver or on a commercial type invoice and be supported by the original (official) inspection and checkloading certificates, if applicable, and either a copy of commercial bill of lading or other commercial receipt signed by recipient agent evidencing delivery. Invoices for reimbursement of transportation and protective service charges, if any, must be supported by the original or a copy of carrier's receipted freight bill or invoice. If shipment is by contract carrier, the Contractor's invoice must also be supported by a copy of the contract between the Contractor and the truck or rail line showing the schedule of rates, or a copy of the truck or rail line's published rates.

For F.O.B at Origin purchases, invoices for payment of freight charges, billed by the transportation companies, must be submitted to the Traffic Management Division, Kansas City Commodity Office. Invoices must contain the applicable Notice to Deliver number to be considered a proper invoice.

When the total quantity to be invoiced includes a fraction of a pound, the fraction should be omitted if less than one-half pound and raised to the next full pound if one-half pound or more. Only whole pounds should be shown on the invoice. Contractor may include more than one shipment on any invoice.

Submission of an invoice when all contract terms and conditions have not been satisfied may subject Contractor to civil and criminal penalties as provided in Titles 15, 18, and 31 of the

United States Code. The USDA will make payment to the Contractor of any amounts due with respect to each shipment/delivery invoiced.

Payment is due after receipt by the Kansas City Finance Office (KCFO), of a properly prepared invoice with the required supporting documentation within the time indicated below. A properly prepared invoice package must include the following supporting documents:

1. USDA Form KC-269 (Notice to Deliver) or commercial invoice form;
2. Origin USDA Inspection Certificate issued at time of checkloading, if applicable; and
3. A copy of the Bill of Lading or other commercial receipt signed by recipient agent evidencing delivery date and quantity of product delivered or destination USDA Inspection Certificate evidencing delivery of product.

<b>If the items delivered are:</b>	<b>Payment must be made as close as possible to but not later than:</b>
<i>Meat or meat food products.</i> 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.	7 <sup>th</sup> day after product delivery

For the purpose of payment, the date of delivery of each shipment of product will be the date of receipt by KCFO of a properly prepared invoice package.

The properly prepared invoice package must be mailed or delivered to the KCFO at the following address:

Director, Kansas City Finance Office  
U.S. Department of Agriculture  
ATTN: Fiscal Operations Division  
Payment Certification Branch STOP 8578  
Kansas City, Missouri 64141-6205  
Telephone: (816) 926-6205

When applicable, the Contractors will note on their invoices, "Invoice subject to adjustment in transportation costs."

USDA payments must be made directly to a financial banking institution. To receive payments electronically, Form SF-1199A, Direct Deposit Sign-up Form, can be obtained from KCCO, Commodity Financial Operations Division, ICB; Telephone (816) 926-2550, or access the form via the internet at: <https://pcsd.usda.gov:3076/finance/>.

#### IX. CLAUSES INCORPORATED BY REFERENCE

This Master Solicitation incorporates one or more solicitation clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer

will make their full text available. Also, the full text of a solicitation provision may be accessed electronically at this address: <http://www.acqnet.gov/far>.

48 CFR FAR Clause Reference Number	Description	Date (Month/Year)
52.202-1	Definition	Jul. 2004
52.203-3	Gratuities	Apr. 1984
52.203-5	Covenant Against Contingent Fees	Apr. 1984
52.203-6	Restriction on Subcontractor Sales to the Government	Sep. 2006
52.203-7	Anti-Kickback Procedures	Jul. 1995
52.203-8	Cancellation, Rescission, and Recover of Funds for Illegal or Improper Activity	Jan.1997
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	Jan. 1997
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	Sep. 2007
52.204-7	Central Contractor Registration	Jul. 2006
52.209-6	Protecting the Government's Interest When Subcontracting with contractors Debarred, Suspended, or Proposed for Debarment.	Sep. 2006
52.211-5	Material Requirements	Aug. 2000
52.211-16	Variation in Quantity	Apr. 1984
52.211-17	Delivery of Excess Quantities	Sep. 1989
52.219-3	Notice of Total HUBZone Set-Aside (Applicable only for contracts involving Set-Asides)	Jan. 1999
52.219-6	Notice of Total Small Business Set-Aside (Applicable only for contracts involving Set-Asides)	Jun. 2003
52.219-7	Notice of Partial Small Business Set-Aside (Applicable only for contracts involving Set-Asides)	Jun. 2003
52.219-8	Utilization of Small Business Concerns (Applicable if contract amount exceeds \$100,000)	May 2004
52.219-9	Small Business Subcontracting Plan (Applicable if contract amount exceeds \$550,000)	Nov. 2007
52.219-9	Alternate 1	Oct. 2001
52.219-14	Limitations on Subcontracting (Applicable only for contracts involving Set-Asides if contract amount exceeds \$100,000)	Dec. 1996
52.219-16	Liquidated Damages – Subcontracting Plan (Applicable only when Clause 52.219-16 applies)	Jan. 1999
52.222-3	Convict Labor	Jun. 2003
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	July 2005
52.222-21	Prohibition of Segregated Facilities	Feb. 1999
52.222-26	Equal Opportunity	March 2007
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of Vietnam Era, and Other Eligible Veterans	Sep. 2006
52.222-36	Affirmative Action for Workers with Disabilities	Jun. 1998
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	Sep. 2006

48 CFR FAR Clause Reference Number	Description	Date (Month/Year)
52.223-6	Drug-Free Workplace	May 2001
52.223-14	Toxic Chemical Release Reporting (Applicable if contract amount exceeds \$100,000)	Aug. 2003
52.225-13	Restrictions on Certain Foreign Purchases	Feb. 2006
52.229-3	Federal, State, and Local Taxes	Apr. 2003
52.232-1	Payments	Apr. 1984
52.232-8	Discounts for Prompt Payment	Feb. 2002
52.232-11	Extras	Apr. 1984
52.232-17	Interest	Jun. 1996
52.232-18	Availability of Funds	Apr. 1984
52.232-23	Assignment of Claims	Jan. 1986
52.232-25	Prompt Payment	Oct. 2003
52.232-33	Payment by Electronic Funds Transfer – Central Contractor Registration	Oct. 2003
52.233-1	Disputes	Jul. 2002
52.233-3	Protest after Award	Aug. 1996
52.233-4	Applicable Law for Breach of Contract Claim	Oct. 2004
52.242-13	Bankruptcy	Jul. 1995
52.242-17	Government Delay of Work	Apr. 1984
52.243-1	Changes – Fixed Price	Aug. 1987
52.244-6	Subcontracts for Commercial Items	Mar. 2007
52.246-2	Inspection of Supplies – Fixed-Price	Aug. 1996
52.246-15	Certificate of Conformance	Apr. 1984
52.246-16	Responsibility for Supplies	Apr. 1984
52.247-15	Contractor Responsibility for Loading and Unloading	Apr. 1984
52.247-16	Contractor Responsibility for Returning Undelivered Freight	Apr. 1984
52.247-34	F.O.B. Destination	Nov. 1991
52.247-36	F.A.S. Vessel, Port of Shipment	Apr. 1984
52.247-48	F.O.B. Destination – Evidence of Shipment	Feb. 1999
52.247-58	Loading, Blocking, and Bracing of Freight Car shipments	Apr. 1984
52.249-1	Termination for Convenience of the Government (Fixed-Price)(Short Form) (Applicable (Applicable if contract amount is \$100,000 or less)	Apr. 1984
52.249-2	Termination for Convenience of the Government (Fixed-Price) ((Applicable if contract amount exceeds \$100,000)	May 2004
52.249-8	Default (Fixed-Price Supply and Services)	Apr. 1984
52.252-2	Clauses Incorporated by Reference	Feb. 1998
52.253-1	Computer Generated Forms	Jan. 1991

A. AMS Clauses

1. Checkloading

- a. Contractor shall not load the commodity for shipment or transfer the commodity

in store unless, at the time of such loading or transferring, the commodity is checkloaded by USDA or by a person of the inspection or grading service designated by USDA. Contractor is responsible for giving notice in sufficient time for a checkloader to be present. The cost of checkloading shall be for the account of Contractor. Checkloading refers to identifying the commodity which was previously inspected and found to meet contract requirements, examining the commodity at the time of loading or transferring for condition of containers and for compliance with labeling and container marking requirements, and determining the number of containers per car, truck, or lot.

b. Checkloading by persons licensed or authorized by USDA shall not relieve Contractor of the obligation to effect a delivery of the commodity meeting contract requirements or constitute a waiver of any of USDA's rights under the contract. The certificates issued as a result of such official checkloading shall be only prima facie evidence of the number and condition of containers.

c. Contractor shall be liable for all shortages which occur before delivery, except that if shipment is by common carrier, Contractor shall not be liable for a shortage reported at destination unless it can be established, notwithstanding the checkloading certificate, that there was an actual shortage at the time of loading for shipment.

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

## 2. Obliteration of Markings

Contractor agrees to take necessary action to prevent the appearance in commercial or other channels of containers and container materials bearing markings required under the contract, including those held by Contractor or others, e.g., overruns. The following actions with respect to all inner and outer containers and container materials will constitute compliance with the intent of this clause: (a) complete obliteration of all markings required under the contract with a permanent opaque paint, or removal of labels which bear such markings, and overlaying or replacing markings so obliterated or removed with commercial labeling; (b) placing a transparent pressure-sensitive sticker on all containers and container materials bearing USDA markings, which shall state in lettering of a prominent size "SALVAGE BY (insert firm's name)" directly on the "NOT TO BE SOLD OR EXCHANGED" legend wherever it appears on the containers and container materials; (c) drawing one or more x's completely through the markings and with a permanent stamp conspicuously placing thereon the following legend: "This container has not been used and shall not be used for shipment of Government commodities."; or (d) any other actions, approved by the Contracting Officer, which accomplish the intent of the foregoing. The appearance in commercial or other channels of any labels, bags, cans, can lids, cases, or any other type of packaging, either filled or unfilled (hereinafter referred

to as "containers and container materials") bearing markings required under the contract may cause USDA expense in determining whether commodities have been diverted from authorized use and in answering inquiries.

B. FAR Clauses

1. Qualification Requirements (52.209-1)

(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.

Contracting Officer  
USDA/AMS/Poultry Programs  
1400 Independence Avenue, SW  
Commodity Procurement Branch STOP 0260  
Washington, DC 20250

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

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

Manufacturer's Name \_\_\_\_\_

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

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

Service Identification \_\_\_\_\_

Test Number \_\_\_\_\_

(to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at

the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

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

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

## 2. Liquidated Damages – Supplies, Services, or Research and Development (52.211-11)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of \$0.0025 per calendar day of delay, not to exceed 45 days of delay.

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

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

## 3. Notification of Employee Rights Concerning Payment of Union Dues or Fees (52.222-39)

(a) *Definition.* As used in this clause—  
“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended ([45 U.S.C. 151-188](#))).

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board  
Division of Information  
1099 14th Street, N.W.  
Washington, DC 20570  
1-866-667-6572  
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR Part 470, Subpart B— Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to—

- (1) Contractors and subcontractors that employ fewer than 15 persons;
- (2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;
- (3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;
- (4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that—
  - (i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and
  - (ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall—

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

#### 4. Alterations in Contract (52.252-4)

Portions of this contract are altered as follows:

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## X. PROVISIONS INCORPORATED BY REFERENCE

This Master Solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its offer. Also the full text of a solicitation provision may be accessed electronically at this address <http://www.acqnet.gov/far>.

48 CFR FAR Provision Reference Number	Description	Date (Month/Year)
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	Sep. 2007
52.204-4	Recycled Paper Printed or Copies Double-Sided on Recycled Paper	Aug. 2000
52.214-3	Amendments to Invitation for Bids	Dec. 1989
52.214-4	False Statements in Bid	Apr. 1984
52.214-5	Submission of Bids	Mar. 1997
52.214-6	Explanation to Prospective Bidders	Apr. 1984
52.214-7	Late Submissions, Modifications, and Withdrawals of Bids	Nov. 1999
52.214-10	Contract Award-Sealed Bidding	Jul. 1990
52.214-15	Period for Acceptance of Bids	Apr. 1984
52.214-20	Bid Samples	Apr. 2002
52.214-21	Descriptive Literature, Alternate 1	Apr. 2002
52.214-22	Evaluation of Bids for Multiple Awards	Mar. 1990
52.214-31	Facsimile Bids	Dec. 1989
52.232-15	Progress Payments Not Included	Apr. 1984
52.252-1	Solicitation Provisions Incorporated by Reference	Feb. 1998

### A. FAR Provisions

#### 1. Annual Representations and Certifications (52.204-8)

(a) The North American Industry Classification System (NAICS) code for this acquisition is 311615 (poultry products) and 311999 (egg products)

(b) The small business size standard is 500 employees or less.

(c) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees).

#### 2. Type of Contract (52.216-1)

The Government contemplates award of a fixed-price supply contract.

### 3. Service of Protest (52.233-2)

(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 General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from USDA/AMS/Poultry Programs, 1400 Independence Ave, SW, Commodity Procurement Branch STOP 0260, Washington, DC 20250.

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

### 4. F.O.B. Destination – Evidence of Shipment (52.247-48)

(a) If this contract is awarded on a free on board (F.O.B.) destination basis, the Contractor—

(1) Shall not submit an invoice for payment until the supplies covered by the invoice have been shipped to the destination; and

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

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

(ii) If transportation is accomplished by parcel post, a copy of the certificate of mailing.

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

(b) The Contractor is not required to submit evidence of shipment documentation with its invoice.

### 5. Alterations in Solicitation (52.252-3)

Portions of this solicitation are altered as follows:

52.214-3 Amendments to Invitations for Bids (Dec 1989)  
(Amendments shall be acknowledged only by the method specified in the IFB.)

52.214-22 Evaluation of bids for Multiple Awards (Mar 1990)  
(Individual awards will be for the items or combination of items that result in the lowest aggregate cost to the Government, excluding the assumed administrative cost.)

52.246-16 Responsibility for Supplies (Apr 1984)

Title and risk of loss will pass to USDA on the date of receipt of the product at the destination specified in the contract, as evidenced by suitable dated documentation such as the consignee receipt, commercial bill of lading, warehouse receipt, dock receipt, or other similar signed and dated document evidencing delivery. If the Contractor has the product in storage and transfer of title is requested, title will pass to USDA as evidenced by the consignee receipt or commercial bill of lading or after final certification of the shipping unit by AMS agent. The Contractor is responsible for any shortage or damages as evidenced by the consignee receipt or other commercial receipt evidencing delivery of product.

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

- (1) Delivery of the commodity to a carrier, if contract delivery terms are F.O.B. origin; or
- (2) Acceptance by the Government or delivery of the commodities to the Government at the destination specified in the contract, whichever is later, if contract delivery terms are F.O.B. destination.
- (3) If delivery is F.A.S. vessel, title and risk of loss and damage shall pass to USDA when the commodity is placed:
  - (i) Alongside vessel within reach of its loading tackle, or
  - (ii) On the dock designated by USDA if the vessel is not available, unless Contractor failed to ship pursuant to the shipping instructions and USDA determines that such failure caused the commodity to arrive too late to be loaded aboard the vessel.

B. AGAR Clauses Incorporated by Reference:

48 CFR AGAR Clause Reference Number	Description	Date (Month/Year)
452.211-72	Statement of Work/Specifications	Feb. 1988
452.211-73	Attachments to Statement of Work/Specifications	Feb. 1988
452.246-70	Inspection and Acceptance	Feb. 1988
452.246-70	Inspection and Acceptance – Alternate 1	Feb. 1988

452.247-70	Delivery Location	Feb. 1988
452.247-71	Marking Deliverables	Feb. 1988
452.247-72	Packing for Domestic Shipment	Feb. 1988

C. AGAR Clauses

Period of Performance (452.211-74)

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

D. AGAR Provisions Incorporated by Reference:

48 CFR AGAR Provision Reference Number	Description	Date (Month/Year)
452.214-70	Award by Lot	Nov. 1996

XI. INQUIRIES

- A. Inquiries pertaining to this Master Solicitation, Specifications, and applicable Invitations(s) should be directed to:

Contracting Officer

Telephone:

Poultry 202-720-7693

- B. Inquiries concerning shipping instructions should be directed to:

Kansas City FSA Commodity Office

Processed Commodities Branch

U.S. Department of Agriculture

Mail STOP 8718

Kansas City, Missouri 64141-8718

Telephone: (816) 926-6063

- C. Inquiries concerning payment should be directed to:

Director, Kansas City Finance Office

U.S. Department of Agriculture

ATTN: Fiscal Operations Division

Payment Certification Branch STOP 8578

Kansas City, Missouri 64141-6205

Telephone: (816) 926-6205

## EXHIBIT 1

### Sample Format for Submitting Offers through DEBES

The following format, which contains all the necessary information for an electronic offer, will assist you in submitting your offer at minimum cost and in a concise and orderly manner. When submitting offers, please include all required information as in the following example (see Section II):

**Submitted at: 8/12/2004 - 11:29:59 am Central Time**

**COMPANY NAME  
ADDRESS  
CITY, STATE ZIP**

<b>Plant 01-PLANT ADDRESS Shipping Point 01-SHIPPING ADDRESS</b>						
Line Item	Pack Size	Destination	Delivery Period	Est. LBS	Price/LBS	Trans Mode
0001	PACK SIZE	DESTINATION CITY	09/16/2008 - 09/30/2008	36000	0.5760	Truck

High Bid Price: 0.5760 Line Item: 0001

Low Bid Price: 0.5760 Line Item: 0001

Sum of Bid Prices: 0.5760

<b>Constraints</b>				
Const #	Max Qty	Plant Location	Shipping Period	Product
1	1	Total for ALL Plants	Total for ALL Shipping Periods	COMMODITY

<b>Certifications</b>	
For this bid your company is designated as: LARGE BUSINESS	
Question	Answer
<b>01</b> ) Offer is made subject to Master Solicitation; the Specifications; Invitation No. 001; and FAR/AGAR.	
<b>02</b> ) Furnish the name, complete mailing address, and telephone number of office or person to receive shipping and delivery instructions. NOTE: FURNISH ADDRESS WITH FIRST BID; THEREAFTER, ENTER "SAME" IF INFORMATION HAS NOT CHANGED. ONLY ENTER UPDATED INFORMATION AS NECESSARY.	SAME
<b>03</b> ) Timely Performance Certification. All products required under any existing USDA contract(s) or subcontract(s) with a not-later-than delivery date prior to this bid opening have been delivered. (Refer to Section II.B. question no. 3.) Choose one:	HAS
<b>04</b> ) Offeror HAS registered in the Central Contractor Registry. Furnish the expiration date of registration.	06/25/2005
<b>05</b> ) Offeror HAS registered with the Online Representations and Certifications Application. Furnish the expiration date of registration.	05/01/2006
<b>076</b> ) 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 (48 C.F.R. 19.13).	No
<b>07</b> ) Furnish name, title, FAX number, phone number and email address of person submitting this bid. (Must be a person authorized to execute contracts on behalf of offeror.)	M. Washington, president Fax (202)635-3254 Ph. (202)635-3255 mwashington@companyname.com

High Bid Price: 0.5760 Plant: 01 Shipping Point: 01 Line Item: 0001

Low Bid Price: 0.5760 Plant: 01 Shipping Point: 01 Line Item: 0001

Sum of Bid Prices: 0.5760

**EXHIBIT 2**

**DOMESTIC ORIGIN CERTIFICATION  
For Poultry Products**

This form must be completed for each contract awarded and be presented to an AMS representative at the processing facility, and the Contracting Officer or agent thereof upon request. Each processing plant producing product under this contract must have a copy of this form on file.

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

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

Invitation Number: \_\_\_\_\_

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

Does your company process or handle products originating from sources other than the United States, its territories or possessions, Puerto Rico, or the Trust Territories of the Pacific Islands?  
YES NO If yes, a copy of your segregation plan must be on file.

Do any of your Subcontractor/Suppliers process or handle products originating from sources other than the United States, its territories or possessions, Puerto Rico, or the Trust Territories of the Pacific Islands?  
YES NO If yes, a copy of their segregation plan must be on file.

I certify under penalty of law that all products sold to the Department of Agriculture are of 100 percent domestic origin and that all above statements are true.

Signature: \_\_\_\_\_

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

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

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

## EXHIBIT 3

### Browser Requirements

Netscape 4.07 or above  
OR  
Internet Explorer (IE) 5.0 or above

The browser must be capable of handling 128-bit encryption. To determine this:

In IE, go to **Help/About Internet Explorer**. The display will show the following:

**Cipher Strength: 128-bit**

If it does not, you can download a new version of the browser from Microsoft at <http://www.microsoft.com>.

In Netscape, this can be determined by going to Help/About Communicator.

The display will show the following:

**This version supports U.S. security with  
RSA Public Key Cryptography, MD2, MD5  
RC2-CBC, RC4, DES-CBC,  
DES-EDE3-CBC.**

If it does not, you can download a new version of the browser from Netscape at <http://home.netscape.com/download/index.html?cp=djucc4>. Choose the 128-bit Strong Encryption\* version for your download.

The Production site is <https://pcsd.usda.gov:3077/mdbc1000.exe?>

### Proxy Servers

Most connection problems are the result of improper browser version, not using 128-bit encryption, and connecting through your corporate proxy server. The proxy server must be set up to allow HTTPS protocol through the appropriate port: Production will be 3077.