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Fruit and Vegetable Programs

May 2004

# ANNOUNCEMENT FV-315

## Purchase of

# FROZEN FRUIT JUICES

## For Distribution to Eligible Outlets

# ANNOUNCEMENT FV-315
# May 2004

Table of Contents


I. GENERAL ..... 4

A. Invitations ..... 4

B. Read and Understand All Contract Documents Carefully ..... 4

C. Transportation ..... 5

D. Responsibility of Offerors ..... 6
1. Annual Certifications, Representations, and Warranties ..... 6
2. Central Contractor Registry System ..... 6
3. Responsibility ..... 6
4. Responsibility of Subcontractors/Suppliers ..... 6
5. Past Performance ..... 7

E. Buy American Certification ..... 7

F. Domestic Products ..... 8

G. Kosher Products ..... 9

H. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity ..... 9

II. SUBMISSION OF OFFERS ..... 10

A. Where and When to Submit Offers ..... 10

B. What to Submit ..... 11

III. ACCEPTANCE OF OFFERS ..... 14

IV. PROVISIONS OF CONTRACT ..... 14

V. CONTRACT COMPLIANCE ..... 15

VI. LOSS ..... 15

A. LOSS DUE TO DETERIORATION OR SPOILAGE ..... 15

B. LOSS DUE TO PRODUCT RECALLED FOR HEALTH OR SAFETY RISK ..... 15

VII. INSPECTION AND CHECKLOADING ..... 16

A. Scheduling Inspection Service ..... 16

B. Laboratory Tests ..... 16

C. Case Stamping in Lieu of Checkloading ..... 16

VIII. SHIPMENT AND DELIVERY--TRANSFER OF TITLE ..... 16

A. Delivery/Shipping Requirements ..... 16

B. Early Delivery or Shipment Requests ..... 17

C. Transfer of Title ..... 17

D. Quantity Tolerance ..... 17

IX. LIQUIDATED DAMAGES ..... 17

A. Compensation to Contractor for Late Mailing of Notice to Deliver ..... 17

B. Compensation to USDA for Delays in Shipment ..... 18
Laboratory Tests ..... 18

X. INVOICES AND PAYMENT ..... 19

XI. INQUIRIES ..... 20

XII. EXHIBITS ..... 21

Exhibit A - Checklist and References to Applicable Bid and Contract Provisions ..... 21

Exhibit B - Sample Invitation ..... 23

Exhibit C - Sample Format for Submitting Offers ..... 25

Exhibit D - DOMESTIC ORIGIN CERTIFICATION ..... 27

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# ANNOUNCEMENT FV-315
# May 2004

## PURCHASE OF FROZEN FRUIT JUICES FOR DISTRIBUTION TO CHILD NUTRITION AND OTHER DOMESTIC FOOD ASSISTANCE PROGRAMS

## I. GENERAL

### A. Invitations

The United States Department of Agriculture (USDA) will periodically issue Invitations under this Announcement for offers to sell to USDA frozen fruit juice products as described in the attached Checklist and References to Applicable Bid and Contract Provisions (Exhibit A). In addition to product descriptions, this exhibit also provides information on applicable commodity specifications (published separately) and a checklist of applicable bid and contract provisions as described in this Announcement.

The Invitations will specify the product type, the offer date, the closing time for receipt of bids, the delivery or shipping period, the destinations for delivery (with any transportation restrictions), and any other provisions applicable to the proposed purchase which are in addition to or different from those set forth herein (see Exhibit B for an example of an Invitation).

Unless stated otherwise in the Invitation, all Invitations issued under this Announcement will incorporate FAR 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, and FAR 52-219-1, Small Business Program Representations. The North American Industry Classification System (NAICS) code for this Announcement is 311411, with a small business standard of 500 employees.

Additional bid and contract provisions are included in both Appendix-1, and in the General Terms and Conditions for the Procurement of Agricultural Commodities or Services, Revision 2, dated November 1984, and Amendments 1, 2, 3, and 4, dated October 1990, November 1990, August 1989, and March 1990, respectively, hereinafter referred to collectively as USDA-1.

### B. Read and Understand All Contract Documents Carefully

Offerors are cautioned to carefully read this Announcement, Appendix-1, USDA-1, and the current Commodity Specifications for Frozen Fruit Juices and Invitations. Failure to do so will be at the offeror's risk. These documents are incorporated into the contract (see Section IV of this Announcement). Offerors are cautioned that statements made by persons other than the Contracting Officer are not binding on the Government unless confirmed in writing by the Contracting Officer.

## C. Transportation

Offer prices must be on an f.o.b. destination or f.a.s. vessel basis unless otherwise specified in the applicable Invitation. Offers will be invited on a purchase unit basis or multiples thereof, except when the Invitation indicates two or three destinations for a line item, which will require a split delivery (drop) from the same delivery vehicle. Certain destinations require delivery by truck only or rail only and will be so identified in the Invitation.

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

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.

If transportation is provided by common carrier, the Contractor must, in support of Contractor's invoice, furnish a copy of the signed commercial bill of lading (BOL) or other commercial receipt evidencing delivery and receipt of the product covered by the Contractor's invoice to the destination specified in the contract. If transportation is provided by other than common carrier, the Contractor must, in support of the Contractor's invoice, attach a receipted copy of the appropriate delivery document showing delivery and receipt of the product covered by the Contractor's invoice at the destination specified in the contract.

**Note: All changes** to include change in final destination, requested by the recipient agency (State Agency or warehouse) and accepted by the contractor are not incorporated into the government contract. Changes, if accepted by the contractor, should be billed to the party involved in the negotiated change. Contractors are advised to obtain acceptance at the contract destination point prior to negotiating any change with the recipient agency. The BOL or commercial receipt should indicate the time of arrival at contract destination point, quantity and condition of the product arriving at contract destination point, and information on any continuing negotiated action. Contractors are not required to negotiate changes to the contract and may refuse any requested change by the recipient agency.

In the event of a dispute regarding government contract requirements, the contractor should immediately contact the Agricultural Marketing Service (AMS), Commodity Procurement Branch (CPB), Fruit and Vegetable Programs (FV) at 202-720-4517 for resolution. The Contractor should advise the Contracting Officer or the Specialist that a contract dispute exists and that an immediate action is required. The Contracting Officer or the Specialist may, if required, initiate a teleconference between the Contractor, the Contract Specialist, Food and Nutrition Service (FNS) and the state agency to resolve the dispute.

## D. Responsibility of Offerors

### 1. Annual Certifications, Representations, and Warranties

An offeror intending to submit bids must complete the Annual Certifications, Representations, and Warranties (Appendix-1) and return it to the Contracting Officer at the mailing address listed in Section II. A. of this Announcement prior to the submission of their initial bid. The Appendix-1 must be signed by an officer of the company. If there are any changes or revisions to the Appendix-1, offeror must promptly submit an updated Appendix-1 to the Contracting Officer, or attach corrections or revisions at the time of bid offering. Provided there are no changes to Appendix-1, it is valid for one year from the date signed. At the end of one year, a new Appendix-1 must be submitted.

### 2. Central Contractor Registry System

Contractor must be registered under the Central Contractor Registry (CCR) System as prescribed in Title 48 C.F. R., Subpart 4.1104 and will certify in Appendix-1 on file with the Contracting Officer.

### 3. Responsibility

A firm submitting an offer under this Announcement must meet the Federal standards for responsibility contained in Title 48 C.F.R. Subpart 9.1, USDA-1, this Announcement, and Invitations. Facilities to be used in fulfilling USDA contracts must be operating under the provisions of the Food and Drug Administration's Good Manufacturing Practices (21 C.F.R., Part 110), to include a current annual plant survey.

### 4. Responsibility of Subcontractors/Suppliers

Contractor shall include the responsibility terms in 3. above in every subcontract for supplies or services used by the Contractor in fulfilling USDA contracts either directly or indirectly and obtain certification of responsibility as described in Appendix-1 to this Announcement from subcontractors and suppliers.

Contractors shall include the domestic product clause in I. F. in all subcontracts for frozen fruit juice products used in fulfilling any contracts under this Announcement. Contractors shall obtain certification from subcontractors or suppliers of frozen fruit juice products to be used in fulfilling contracts; this certification must be approved by the USDA, Agricultural Marketing Service (AMS) Processed Products Branch (PPB) for compliance with domestic origin requirements prior to their performance on the contract. If the subcontractor(s) is operating under a segregation plan approved by PPB, all foreign products must be identified per Paragraph I. F. of this Announcement.

Subcontractors or suppliers of frozen fruit juice products will be deemed nonresponsible if:

(a) They process or otherwise handle non-domestic products and do not have a domestic product segregation plan approved by the PPB;

(b) They are not operating under all applicable provisions of the Food and Drug Administration or governing State Agency where the processing facility is located, and/or do not possess a current annual plant survey or plant systems audit;

(c) They have been suspended or debarred under the provisions of 48 C.F.R. Subpart 9.4, or if they have been suspended or debarred as an affiliate of any party who has been suspended or debarred under the provisions of 48 C.F.R. Subpart 9.4.

**5. Past Performance**

The offeror must certify to timely performance on current contracts and subcontracts in Item 8 of the offer. A determination that late performance is beyond the control or negligence of the Contractor or the subcontractor must be made by the Contracting Officer prior to bid opening. An offeror may be deemed nonresponsible if the offeror or any of their affiliates or subcontractors are delivering late on other contracts or subcontracts with USDA and the late delivery is not due to causes beyond the Contractor's or the Contractor's subcontractor's control or negligence. This provision, as it pertains to small business, is a deviation from 48 C.F.R. Subpart 19.6.

Bidders are cautioned NOT to BID on quantities in excess of what they can reasonably expect to timely deliver in accordance with the contract. Deliveries must be made during the contracted delivery period and no extensions will be granted due to weekends or Federal holidays. Because this commodity is used in domestic food programs, on-time delivery is imperative. See Section IX. B. as to the importance of timely delivery and the difficulty inherent in quantifying actual damages for delay in delivery. Late deliveries cause serious and substantial damages to USDA and to other agencies that use the commodity. Contractors must inform the Contracting Officer, as soon as possible, of late deliveries and how soon delivery can be expected. This provision is a deviation from 48 C.F.R. § 9.103(b) and § 19.6.

A false certification may result in rejection of the offer, suspension and debarment by USDA, termination of the contract, liability for damages under the provisions of USDA-1, other administrative actions, or criminal prosecution.

**E. Buy American Certification**

Frozen fruit juices must be of domestic origin as defined in I. F. below. This provision is a deviation from 48 C.F.R. part 25 and for the purposes of this Announcement supercedes Article 49 of USDA-1.

## F. Domestic Products

All frozen fruit juices are to be used in fulfilling contracts awarded under this Announcement must be grown, processed, and packed 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) in accordance with responsible commercial practices, during the packing season, and from the crop year(s) specified in the Invitation.

All products must meet the requirements specified in the applicable U.S. Standards for Grades (7 C.F.R. part 52) and applicable commodity specification effective on the date of the Invitation and any additional requirements listed herein.

If any similar product originating from sources other than the United States are processed or otherwise handled, Contractor shall develop and maintain an identification and record system for these products to ensure that non-domestic products are segregated and not used to fulfill contracts awarded under this Announcement. Such segregation plans must be made available to the AMS inspection and/or audit agent.

The Contractor must ensure that both the Contractor and subcontractor(s) maintain records including, but not limited to, invoices, production and inventory records evidencing product origin, load or warehouse storage receipts for raw product (i.e., bin tags), product blend (formulation) records, product coding explanations, finished product warehousing records, shipping or payment records, or other documentation or evidence that clearly establishes the product's domestic origin. Contractor agrees to make such records available for review by the Government in accordance with Article 76 of USDA-1.

Contractor agrees to include this domestic origin certification clause in all subcontracts for frozen fruit juice products used in fulfilling any contracts awarded under this Announcement. Contractor further agrees to obtain the documentation described above from each subcontractor. Contractors must ensure that documentation provided by any subcontractors demonstrates that the product is of domestic origin.

At the time of shipment the AMS agent will select and review at least one code for each contract to determine compliance with the Agency's domestic origin requirements. Subsequent AMS audits will examine as many codes as is necessary to verify compliance.

The form, Domestic Origin Certification (Exhibit D), from the contractor and all subcontractors must be provided to the AMS agent prior to inspection. Contractor certifications must be signed by an authorized individual as indicated on the contractor's current Appendix-1. Signature authority for the Certification of Origin, only, may be delegated to other more informed individuals. Such delegation of authority must be on company letterhead and signed by an officer of the company. A copy of this delegation must be provided to the USDA inspector prior to inspection, and a copy provided to the Contracting Officer.

The burden of proof of compliance is on the Contractor. Failure to observe this requirement may lead to contract termination, suspension or debarment or other administrative actions, and penalties at Title 18, Section 1001 of the U.S. Code concerning falsification of information.

## G. Kosher Products

Occasionally, purchase units will be identified on Invitations as "Kosher Only" and will be so identified in the Invitation. Offerors must not bid on these purchase units unless they are properly certified to produce Kosher products. Vendors must comply with the applicable dietary (KOSHER) laws as established by the "613 COUNCIL OF KASHRUTH."

Vendors receiving contract items identified as "KOSHER" must contact the Board of Jewish Education of Greater New York at telephone 646-472-5365.

A rabbinic supervisor will be sent by the Board of Jewish Education of Greater New York to visit the plant to certify compliance with the applicable dietary (KOSHER) laws.

## H. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity

1. If the Government receives information that a Contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (P.L. 104-106), the Government may:

   (a) Cancel the solicitation, if the contract has not yet been awarded or issued; or
   (b) Rescind the contract with respect to which:

      (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either (a) exchanging the information covered by such subsections for anything of value; or (b) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

      (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

2. If the Government rescinds the contract under paragraph 1 of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

3. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this Announcement.

## II. SUBMISSION OF OFFERS

### A. Where and when to Submit Offers

Offers, modifications and withdrawals must be submitted via the Internet by accessing the Domestic Electronic Bid System (DEBES). Offerors may request vendor DEBES ID's and passwords by contacting the Contracting Office (202) 720-4517. Offers, modifications and withdrawals submitted by means other than DEBES will be considered non-responsive.

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

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

- **Offerors are advised to allow sufficient time to input bids on the date of bid opening due to high volume of Internet Traffic.**

*If electronic bid submission is unsuccessful due to USDA system failure, offers should be FAXED prior to bid closing. Offeror MUST contact the Contracting Office prior to faxing the offers.*

*If offers are submitted via FAX:*
FAX: 202-720-7271 (24 Hours)

FAX receipt verification: 202-720-2104
(7:30 a.m. to 4:00 p.m., Washington, DC time, Mon.-Fri.)

Faxed offers, modifications or withdrawals of offers must be addressed to:
Contracting Officer
Fruit and Vegetable Programs
Agricultural Marketing Service
U.S. Department of Agriculture

Room 2546-South Building, Stop 0239
1400 Independence Avenue, SW
Washington, D.C. 20250-0239

Offers, modifications, or withdrawals of offers under this Announcement must be received in DEBES or the USDA-AMS-MSD Communications Office not later than the **Central Time** on the date specified in the Invitation. Whether an offer, modification, or withdrawal is received within the time limitation will be determined by the latest time recorded in DEBES or the time stamp recorded by the USDA-AMS-MSD Communications Office (if by facsimile).

## B. What to Submit

1. Offers submitted through DEBES must include the following:

   (a) Answers to all certification questions.
   (b) Bid prices for as many item numbers as desired.
   (c) Constraints according to (4) below. **At least one constraint must be entered before a bid can be submitted via the DEBES system.**

2. A faxed offer must include each of the following numbered items in the order listed.

   Notes: Bids that fail to comply with any of these instructions will be considered non-responsive.

   Exhibit C is an example of how offers may be submitted giving all essential details in the briefest possible manner.

   1. Identify submission as a bid.
      Example: Bid – ANNOUNCEMENT FV-315, Invitation No. _____.

   2. Name, complete address of offeror, telephone number, and return FAX number.

      Note: If more than one return FAX number is listed, the first one will be used for any acceptance wire.

   3. A statement that the offer is made subject to Announcement FV-315; Appendix-1; the Commodity Specification for Frozen Fruit Juices dated ____; Invitation No. ____; and USDA-1, Revision No. 2, and Amendments 1 (October 1990), 2 (November 1990), 3 (August 1989), and 4 (March 1990).

      Note: If documents are subsequently changed, offers must reference the new documents or amendments.

   4. (a) The maximum number of units (whole purchase units) of each commodity

type (if applicable) offeror is willing to sell for each delivery period, or combination of delivery periods. The maximum number of units may be different for each delivery period, if desired.

(b) The maximum number of units (whole purchase units) of each commodity type (if applicable), or combination or commodity types, offeror is willing to sell for the entire Invitation.

(c) The minimum number of units (whole purchase units) of each commodity type offeror is willing to sell for the entire Invitation. The minimum permitted for each commodity type shall not exceed 3 purchase units unless specified differently in the Invitation.

Notes: If the maximum number of units offered for the delivery period(s) and/or the entire Invitation is not quoted, AMS may award up to the maximum demand for each item offered.

Vendors may specify a maximum number of units offered for each commodity type (if applicable) and plant, or combination of plants, if more than one plant will be used.

Maximum quantity offered may be greater than the demand shown on the Invitation.

5. The item number listed on the applicable Invitation, destination, and price per case delivered to specific destination. Indicate the shipping point, if more than one will be used.

Notes: Only one bid per line item number per offeror is acceptable. Quote only one delivered price per case for each destination or multiple destinations listed as one item number. If more than one price per item is quoted, the item number will be ruled non-responsive.

A single, numerical price per case must be indicated next to each line item number on which you intend to bid. The same price may not be carried from one line item to another through the use of quotation marks, arrows, or any other method.

The offeror may submit offers for as many item numbers as desired. The maximum quantity to be awarded per offeror is determined by the constraints quoted in Item 4 of the bid.

Offer prices may be quoted up to four places to the right of the decimal point. If other than four places, any digit past the fourth will automatically be dropped.

The Invitation will indicate any restrictions in the mode of shipment on particular destinations by indicating "Truck Only" or "Rail Only."

Offer must not state transportation restriction on bid. Restrictions are as shown on the Invitations.

The Invitation will indicate Kosher requirements at particular destinations by indicating "Kosher Only."

USDA may adjust the quantities listed on the Invitation based on offerings, market conditions, and/or program requirements.

6. Name and location of each processing plant and shipping point (include complete street address and county). If the shipping point is the same as the processing plant, state "Same."

7. Name, complete mailing address, and telephone number of office or person to receive shipping and delivery instructions.

8. Timely performance certification. Include answer (a), (b), or (c) as appropriate:

   (a) The offeror and any of their subcontractors HAVE completed required performance of any contracts with USDA prior to this bid opening; or

   (b) The offeror and any of their subcontractors HAVE NOT completed required performance of any contracts with USDA prior to this bid opening and (HAVE) (HAVE NOT) notified the Contracting Officer; or

   (c) The offeror and any of their subcontractors DOES NOT have outstanding contracts with USDA.

9. Include answer (a) or (b) as appropriate:

   (a) Offeror (DOES) (DOES NOT) certify that annual certifications, representations, and warranties dated (date Appendix-1 was signed by officer) which are incorporated herein by reference as Appendix-1, have been submitted to the Contracting Officer issuing this solicitation and that Appendix-1 is current, accurate, and complete as of the date of this offer and are a part of this offer; and

   (b) Offeror (HAS) (HAS NOT) submitted changes or additions to Appendix-1 with this offer.

Note: If Appendix-1 is subsequently amended, offeror must reference such amendment by date.

10. Offeror (IS) (IS NOT) requesting price preference as a Small Business Administration Certified HUBZone Business Concern.

11. Signature and title of person submitting the bid on behalf of offeror. The person submitting the bid must be an officer or representative authorized to sign an offer as evidenced by the Appendix-1 filed with the contracting officer. (See Article 6 of USDA-1 prior to signing any offer).

## III. ACCEPTANCE OF OFFERS

USDA will award contracts to responsible bidders whose bids conform to the Announcement and the applicable Invitation and whose offers are most advantageous to the Government in terms of, but not limited to, price, quantity requirements, and transportation costs. Acceptance of offers will be made by FAX not later than midnight, Washington, D.C. time, on the date specified in the Invitation.

Failure to accept an offer will constitute rejection. Acceptance as specified above will result in a binding contract without further action by either party.

A notice of award will be issued in the form of a Food Purchase Report (FPR) posted at the Department's Office of Public Affairs, News Division, Washington, D.C., on the day of acceptance. After award, information is also available electronically at the following Internet address: http://www.ams.usda.gov/cp.

Information on awards will be available by telephone to bidders and interested parties promptly following the filing of contracts with the USDA-AMS-MSD Communications Office and the posting of the FPR. Inquiries may be made to the USDA - AMS Fruit and Vegetable Programs Commodity Procurement Office or the Contracting Officer.

## IV. PROVISIONS OF CONTRACT

The contract consists of this Announcement including Appendix-1, the applicable Invitation, the applicable Commodity Specifications for Frozen Fruit Juices, the Contractor's offer including the Appendix-1, the acceptance by USDA, and USDA-1, except Articles 34, 49, 50 and all of Part E. Article 56 of USDA-1 is hereby amended by deleting the words "shipment from origin" from the third line of paragraph (a) and inserting in lieu thereof the word "delivery." Additionally, Articles 56, 65, and 67 of USDA-1 are hereby amended by deleting the words "ship", "shipping", "shipment(s)", and "shipped" and inserting as appropriate the words "delivery(ies)" or "delivered."

If the provisions of contract documents are not consistent, the following priority, in descending order, will prevail: Invitation, Announcement, Specification, Appendix-1 and USDA-1.

## V. CONTRACT COMPLIANCE

The Contractor must assure compliance with all requirements of this Announcement and the applicable Commodity Specifications 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 the Announcement and the applicable Commodity Specifications. 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. Actual damages not duplicative of liquidated damages may be assessed for performance not in accordance with the contract.

## VI. LOSS

### A. LOSS DUE TO DETERIORATION OR SPOILAGE

The Contractor will be liable for losses due to deterioration or spoilage for the contracted commodities, which are discovered within nine (9) months of the date of delivery to USDA, in accordance with the provisions of Article 61 of USDA-1.

### B. LOSS DUE TO PRODUCT RECALLED FOR HEALTH OR SAFETY RISK

In accordance with Article 60 of USDA-1, the contractor shall be held liable for failure of the commodity or product to meet all of the contract requirements. In the event the commodity or product is recalled due to a health or safety risk, the contractor is responsible for the removal and replacement of recalled commodities or products, and reimbursement of State and local costs incurred as a result of the recall, outlined in the Food and Nutrition Service's (FNS) Commodity Hold and Recall Process. These costs include, at a minimum, storage, transportation, processing and distribution of the commodities or products.

Additionally, when contractor provides bulk product which is then further processed in accordance with a State contract, and that bulk product is subsequently recalled, the contractor is responsible for all costs incurred by USDA, the State Distributing Agency, and/or recipient agencies, as outlined in the FNS's Commodity Hold and Recall Process. At a minimum, these costs include replacement of the raw commodity and reimbursement for processing costs.

## VII. INSPECTION AND CHECKLOADING

Inspection and checkloading as required by Articles 54 and 55 of USDA-1 must be performed by an AMS agent. The Contractor will not ship the product before receipt of shipping instructions from the Farm Service Agency (FSA) Kansas City Commodity Office (KCCO) or before the product has been inspected by the AMS agent and found to meet contract specifications.

Inspection and laboratory analysis are specification requirements. Allowing sufficient time to complete all required original analyses is the responsibility of the contractor. Offerors must give appropriate consideration to this factor and the following timelines when submitting offers and planning production schedules so that delays in shipments and resulting liquidated damages can be avoided:

### A. Scheduling Inspection Service

The Contractor must give the USDA Grader at least 7 calendar days advance notice when scheduling inspection service. Prior to sampling, the Contractor must furnish the USDA Grader with a list of codes and the approximate number of cases per code.

Contractors are encouraged to submit requests for inspection in writing with verifiable receipt notice, such as fax log, to alleviate possible mis-communication.

### B. Laboratory Tests

The Contractor must allow 14 calendar days after product sampling for laboratory tests (when required) to be completed and returned. (see Section IX. B.)

### C. Case Stamping in Lieu of Checkloading

Case stamping in lieu of checkloading is acceptable, at the USDA Inspector's discretion, and may be performed at any time up to 28 calendar days prior to shipment of the product. Contractors must be aware that if this option is exercised, and an AMS Grader does not perform checkloading, the Contractor assumes all risk for these shipments and deliveries.

## VIII. SHIPMENT AND DELIVERY--TRANSFER OF TITLE

### A. Delivery/Shipping Requirements

Shipment and delivery must be made in accordance with this Announcement, the applicable Invitation, Articles 56 and 64(b) of USDA-1, and the Notice-to-Deliver (Form KC-269) issued by KCCO. The Contractor must closely follow delivery notification instructions contained in the Notice-to-Deliver. Such notification of delivery is vital to proper execution of shipment, particularly in cases of minimal transit time.

The Contractor must notify State distributing agencies and consignees of delivery or shipment. For rail shipment, notification must be made on the day of shipment. For truck

delivery or shipment, notification of the estimated arrival time should be made as far in advance of delivery as possible, but not less than 24 hours. In addition, for truck or piggyback shipment, the Contractor must request and keep scheduled appointments. Unloading appointments for truck or piggyback deliveries or shipment must be requested from the consignee contact party(ies) at least 24 hours in advance of delivery. A copy of the original USDA Agricultural Products Acceptance Certificate must accompany each delivery/shipment so that it will be easily available to the warehouseman or consignee (as applicable) upon arrival if the domestic requirement is met.

### B. Early Delivery or Shipment Requests

Requests for permission to deliver or ship in advance of the "Deliver Net" date (which is the first day of the delivery period) given in the Notice-to-Deliver must be made to KCCO. Approval will be granted only if the consignee is willing to accept product early. The Contractor must arrange for an AMS agent to perform necessary checkloading and final acceptance duties and provide KCCO the assurances required for the delivery arrangement.

### C. Transfer of Title

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's receipt, warehouse receipt, dock receipt, or other similar signed and dated document. If the Contractor has the product in storage and transfer of title is requested, title will pass to USDA as evidenced by the consignee's receipt after final certification of the shipping unit by an AMS agent. The Contractor is responsible for any shortage or damages as evidenced by the consignee's receipt or other commercial receipt evidencing delivery of product.

### D. Quantity Tolerance

Contractor will be allowed a tolerance on the final delivery of plus or minus 50 cases of product from each shipping point named in the contract.

## IX. LIQUIDATED DAMAGES

### A. Compensation to Contractor for Late Mailing of Notice to Deliver

Liquidated damages for delay in shipment or delivery due to the late mailing of Notice-to-Deliver will be payable in accordance with Article 65 of USDA-1 and will be at the rate of 15 cents per hundredweight ($0.0015 per pound) net per calendar day.

## B. Compensation to USDA for Delays in Shipment

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

If a vendor determines that he will not be able to deliver the commodity by the Not Later Than date on the Notice to Deliver, the vendor is required to notify the contracting office immediately. Failure to notify the contracting office **in writing** within 2 working days following a failure to deliver within the delivery period may result in termination of that line item, termination of the entire contract, or a discount being assessed.

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

### Laboratory Tests

If the AMS laboratory causes delays, an extension in the shipping/delivery period will be authorized provided that the following conditions are met:

- all production lots included in a shipping unit must be produced at least 21 business days in advance of the last date to deliver without liquidated damages; and

- arrangements were made with PPB to draw representative samples at least 28 calendar days in advance of the last date to deliver without liquidated damages; and

- the results from the AMS laboratory for such samples from these production lots were not made available to the contractor at least 7 business days in advance of the last date to deliver without liquidated damages; and

- the delivery date will be extended by the number of business days that the AMS laboratory results were delayed beyond 7 business days in advance of the last date to deliver without liquidated damages.

Notes: Delays by the Contractor's laboratory are the responsibility of the Contractor. Extensions do not apply to Contractor's laboratory results.

Arrangements must be made with the PPB Grader within the specified timelines. Extensions will not be granted if the contractor fails to schedule inspection service within the specified timelines.

## X. INVOICES AND PAYMENT

Invoicing and payment will be handled in accordance with Article 70 of USDA-1, except that a properly prepared invoice package must be mailed or delivered to the Kansas City Management Office at the address listed in Section XI. C. of this Announcement. A properly prepared invoice package will consist of:

A. USDA Form KC-269 or commercial invoice form; and

B. Original USDA Certificate of Loading (FV-419-1) issued at the time of checkloading; and

C. A copy of the commercial Bill of Lading (BOL) or other commercial receipt evidencing delivery and receipt of the product to the destination specified in the contract. The BOL or commercial receipt must include the quantity received, the date received, and signature.

Interest will be paid in accordance with the provisions of the Prompt Payment Act (31 U.S.C. § 3902) if payment is made beyond the thirtieth calendar day after the date of delivery. For payment purposes, the date of delivery will be the receipt date by the Kansas City FSA Management Office, of a properly prepared invoice package.

Recent legislation requires that all Government payments be made directly to a financial banking institution by electronic transfer. To receive payments electronically, Form SF-3881, ACH Vendor Payment Form may be obtained from the Kansas City FSA Management Office, Commodity Financial Operations Division, Inventory Control Branch; Telephone (816) 926-2550.

When payment by electronic transfer has been established, the Contractor must notify the Contracting Officer of the mailing address for the disbursement statement.

## XI. INQUIRIES

A. Inquiries pertaining to this Announcement and applicable documents should be directed to:

Contracting Officer
USDA/AMS/Fruit and Vegetable Programs
Commodity Procurement Branch STOP 0239
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0239

Telephone: (202) 720-4517

B. Inquiries concerning shipping instruction should be directed to:

Director, Kansas City FSA Commodity Office
U.S. Department of Agriculture
P.O. Box 419205
Kansas City, Missouri 64141-6205

Telephone: (816) 926-6062

C. Inquiries concerning payment should be directed to:

Kansas City Management Office
U.S. Department of Agriculture
ATTN: CFOD
P.O. Box 419205
Kansas City, Missouri 64141-6205

Telephone: (816) 926-6205

Suzanne Rigby, Chief
Commodity Procurement Branch
Fruit and Vegetable Programs
Agricultural Marketing Service

Attachments

## XII. EXHIBITS

### Exhibit A

### Checklist and References to Applicable Bid and Contract Provisions

| Product/ Commodity | U. S. Grade | Specifications Listed in Priority Order | Commercial Item Description | Packaging and Packing | Minimum Offer Unit Size/ Shipping Unit | Tolerance Section | Competition (See Invitation for exceptions) |
|---|---|---|---|---|---|---|---|
| Frozen Concentrated Orange Juice | A | Invitation<br><br>Commodity Specification for Frozen Juice<br><br>U.S. Standard 7 CFR, Part 52<br><br>Good Manufacturing Practices 21 CFR, Part 110 | None | 12/32 oz can | 36,000 lbs.<br>1,200 cases | Plus or minus 50 cases per shipping point on final delivery. | Full & Open |
| Orange Juice From Concentrate | A | | None | 70/4 oz ctn | 36,480 lbs<br>1,920 cases | | |
| Pasteurized Orange Juice (Not from Concentrate) | A | | None | 70/4 oz ctn | 36,480 lbs<br>1,920 cases | | |
| Apple Juice from Concentrate | A | | None | 70/4 oz ctn | 36,480 lbs<br>1,920 cases | | |
| Pasteurized Apple Juice (Not from Concentrate | A | | None | 70/4 oz ctn | 36,480 lbs<br>1,920 cases | | |
| | | | | | | | |

# ANNOUNCEMENT FV-315
# May 2004

## Exhibit B
## Sample Invitation

**Note: New vendors and subcontractors must supply all required paperwork (Appendix 1, Financial Statement, and 3 Reference Letters). In addition all Vendors must also be registered in the CCR within 48 hours after bid opening or your company may be considered non-responsible.**

Date Issued: April 1, 2004

Frozen Fruit Juices, Announcement FV-315, Invitation 001

The U.S. Department of Agriculture (USDA) invites offers to sell frozen fruit juice products as indicated below and per the Announcement for distribution to the child nutrition and other domestic food assistance programs. Offers are due by **1 p.m., Central time, Monday, April 5, 2004.** Acceptances will be announced by midnight, Friday, April 9, 2004. Deliveries are to be made from July 1, 2004 through July 31, 2004.

Offers are invited from the trade for the following Frozen Fruit Juice:

| | | |
|---|---|---|
| Concentrated Orange Juice | 32/12 ounce | 13,200 cases |

Bids must be submitted electronically via the Domestic Electronic Bid Entry System (DEBES) on the internet. Offerors who submit bids using other than DEBES, will be deemed non-responsive. Offeror must be assigned a Logon ID by USDA to access the site. The Internet address is: http://pcsd.usda.gov/debes which translates into a connection of https://pcsd.usda.gov:3077/mdbc1000.exe? Once connected, follow the online procedures. A "HELP" button provides detailed instructions for using the system or call 202-720-4517 for assistance.

Bidders are cautioned to bid only quantities they can reasonably expect to produce and deliver in accordance with the contract. Inquiries about Announcement FV-315, Appendix-1, the Commodity Specification for Frozen Fruit Juices dated May 2004, or this Invitation should be directed to the Contracting Officer, USDA/AMS/ Fruit and Vegetable Programs, Commodity Procurement Branch STOP 0239, 1400 Independence Avenue, S.W., Washington, DC 20090-6465, telephone (202) 720-4517. An electronic version of this Invitation can be obtained through the World Wide Web via the Commodity Procurement Home Page at http://www.ams.usda.gov/cp.

Purchases will be made on a delivered to destination basis, subject to Announcement FV-315, to the listed locations. Delivery by trucks or railcars is optional to the contractor, except for those destination(s) which specify delivery by truck only or rail only.

**Split shipments are indicated by a single asterisk.**

# ANNOUNCEMENT FV-315
## May 2004

ANNOUNCEMENT : FV315
INVITATION : 001
COMM GROUP : 33 FRUIT JUICE FROZ
COMM TYPE : 10 ORANGE JUICE CONC., FROZEN
PACK SIZE : 32 12/32 OZ CAN

| ITEM NO | DESTINATION CITY | ST | TRANS RESTR | QUANTITY (CSE) | PRICE PER (CSE) |
|---|---|---|---|---|---|
| **DELIVERY PERIOD 07/01/04 - 07/15/04** | | | | | |
| 0001 | BOSTON | MA | TRUCK ONLY | 1,200 | _____ |
| 0002 | BRONX | NY | TRUCK ONLY | 1,200 | _____ |
| 0003 | ROCHESTER | NY | TRUCK ONLY | 1,200 | _____ |
| 0004 | HILLSIDE | NJ | TRUCK ONLY | 1,200 | _____ |
| 0005 | VINELAND | NJ | | 1,200 | _____ |
| **DELIVERY PERIOD 07/16/04 - 07/31/04** | | | | | |
| 0006 | BRONX | NY | TRUCK ONLY | 1,200 | _____ |
| 0007 | WASHINGTON | DC | TRUCK ONLY | 1,200 | _____ |
| 0008 | DELAWARE CITY | DE | TRUCK ONLY | 1,200 | _____ |
| | WASHINGTON | DC | TRUCK ONLY | 1,200 | |
| 0009 | LORTON | VA | TRUCK ONLY | 600 | _____ |
| | VERONA | VA | TRUCK ONLY | 600 | |
| 0010 | NEWPORT NEWS | VA | TRUCK ONLY | 600 | _____ |
| | NORFOLK | VA | TRUCK ONLY | 600 | |

TOTAL QUANTITY FOR COMMODITY TYPE 13,200

TOTAL QUANTITY FOR INVITATION 13,200

_____(signed)_____
Contracting Officer

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

# ANNOUNCEMENT FV-315
# May 2004

## Exhibit C
## Sample Format for Submitting Offers Via Fax

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

1. BID: Announcement FV315; Invitation No. 001

2. Potomac Canning Co.
   1776 Mt. Vernon Avenue, NW
   Washington, DC 20250
   Telephone No. 202-455-3156

3. Offer is made subject to Announcement FV-315; Appendix 1; the Commodity Specification for Frozen Fruit Juices, dated May 2004; Invitation No. 001; and USDA-1, Revision No. 2, and Amendments 1 (October 1990), 2 (November 1990), 3 (August 1989), and 4 (March 1990).

4. (a) Plant 1 — 5 purchase units (b) 11 purchase units (c) 1 purchase unit

   (a) Plant 2 — 6 purchase units (b) none (c) 3 purchase units

5.

| | | | |
|---|---|---|---|
| 001 | BRONX | NY | $1.00 |
| 002 | TOLEDO | OH | $1.00 |
| 003 | NEW ORLEANS | LA | $1.00 |
| 004 | BATON ROUGE | LA | $1.00 |
| | NEW ORLEANS | LA | |
| 005 | KANSAS CITY | MO | $1.00 |
| | ST LOUIS | MO | |
| 006 | LONG BEACH | CA | $1.00 |
| 007 | LOS ANGELES | CA | $1.00 |
| 008 | RIVERSIDE | CA | $1.00 |
| | SAN BERNADINO | CA | |
| 009 | SAN DIEGO | CA | $1.00 |
| 010 | LOS ANGELES/FAS | CA | $1.00 |

6. (a) Potomac Canning Co.
1776 Mt. Vernon Avenue, NW
Washington, DC 20250
(Lincoln County)

(b) Shipping point 1: same
(b) Shipping point 2: Cross Town Warehouse
1120 Eastern Avenue, SW
Washington, DC 20250
(Lincoln County)

7. G. Washington
Potomac Canning Co.
1776 Mt. Vernon Avenue, NW
Washington, DC 20250
Telephone: 202-263-2353

8. (Select a, b or c as appropriate)
(a) have
(b) have not
have, have not
(c) does not

9. (Select a or b as appropriate)
(a) does, dated _____
does not
(b) has
has not

10. (Is)
(Is Not)

11. ____(SIGNED_____
G. Washington, President

# ANNOUNCEMENT FV-315
# May 2004

## Exhibit D

**DOMESTIC ORIGIN CERTIFICATION**

This form must be completed by an authorized company official or their designee (as specified on the Appendix-1) for each contract/delivery awarded. The completed form must be presented to a representative of the USDA, Agricultural Marketing Service (AMS) Fresh Products Branch (FPB), or Processed Products Branch (PPB) (USDA grader) at the processing facility; the completed form must also be presented to the USDA Contracting Officer or agent thereof upon request. ***If imported product is brought into the facility during the production and shipment of product for this contract, it is the contractor's responsibility to notify the Fresh Products Branch or the Processed Products Branch immediately***. Each contractor and/or processing facility under this contract must have a copy of this form on file.

**Announcement Number:** _____

**Invitation Number:** _____

**Contract Number:** _____

**Product:** _____

**Crop Year (Packing Season):** _____

Does your company process or handle products similar to those provided under your contract that originate from sources other than the United States, its territories or possessions, Puerto Rico, or the Trust Territories of the Pacific Islands?

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

Do any of your Subcontractor's/Supplier's process or handle products relevant to their contract that originate from sources other than the United States, its territories or possessions, Puerto Rico, or the Trust Territories of the Pacific Islands?

☐ Yes ☐ No If yes, attach a copy of each subcontractor's/supplier's segregation plan explaining how such product is stored and processed separate from domestic product.

**I certify that all products sold to the Department of Agriculture are of 100 percent domestic origin and that all above statements are true. I further certify that traceability documentation will be made available to USDA, Agricultural Marketing Service representatives upon request. WARNING:** *18 U.S.C., Part I, Chapter 47, Section 1001 states that "Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.*
*Knowingly and willingly making false statements for fresh or frozen fruits and vegetables may also constitute a violation of the Perishable Agricultural Commodities Act (7 U.S.C., 499a - 499t), and may result in monetary penalties or license suspension or revocation.*

**Signature:** _____
Print and Sign Name (Only signatures authorized by Appendix-1)

**Title:** _____
**Company:** _____
**Date:** _____