

ANNOUNCEMENT PY-271

Purchase Of

CHICKEN NUGGETS AND CHICKEN PATTIES

For Distribution To Eligible Outlets



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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.

I. GENERAL

A. The United States Department of Agriculture (USDA) will periodically issue an Invitation for offers (Invitation) under this Announcement to sell to USDA frozen, fully cooked, breaded chicken nuggets and patties (commodity). The Commodity Specification listed below, is published separately and is incorporated herein and made a part hereof.

Commodity Specification for Chicken Nuggets and Patties dated July 2003

- Chicken Nuggets (222330)
- Chicken Patties (223030)

B. The Invitation will specify the commodity, the offer date, the delivery period, the destinations, estimated quantities, the closing time for receipt of offers, and any provisions applicable to the proposed procurement which are in addition to or different from those contained in this Announcement. Provisions of the General Terms and Conditions for the Procurement of Agricultural Commodities or Services, Revision No. 2, dated November 1984, and Amendments 1, 2, 3, and 4, dated October 1990, November 1990, August 1989, and March 1990, respectively (USDA-1), are incorporated herein except as specifically excluded. Offerors are cautioned to carefully read all applicable terms and conditions of USDA-1, this Announcement, the applicable Invitation, and the applicable Commodity Specification. The Contractor is cautioned that statements made by persons other than the Contracting Officer are not binding on the Government unless subsequently confirmed in writing by the Contracting Officer.

C. Offer prices will be f.o.b. (or f.a.s. vessel) at the destinations listed in the applicable Invitation. Offers will be invited on a purchase unit basis or multiples thereof, except that from time to time the Invitation will indicate two or more destinations in a line item which will require a split delivery (drop) at each destination. Delivery by either mechanically refrigerated trucks or mechanically refrigerated railcars is at the option of the contractor except for those destinations which specify the method of delivery.

D. Responsibility of Offeror

A firm submitting an offer under this Announcement must meet the Federal standards for responsibility in the Federal Acquisition Regulations at 48 C.F.R. part 9, USDA-1, and this Announcement. Facilities to be used in fulfilling USDA contracts must be operating under the provisions of the Poultry Products Inspection Act (PPIA) and regulations issued thereunder. All subcontractors and suppliers subject to the PPIA who will be utilized in fulfilling this procurement, either directly or indirectly, must first be approved by the Contracting Officer for responsibility. Approval must be received prior to their performance under this Announcement. Offerors must submit a complete list of all subcontractors and suppliers, including potential subcontractors and suppliers, prior to the offeror's participation in this program. During the life of the Announcement, offerors must update the list of subcontractors and suppliers as changes occur. Subcontractors and suppliers will be determined to be nonresponsible if they have been suspended or debarred and that suspension or debarment is in effect at the time of a bid or during performance.

In addition to the certifications required by Parts C and D of USDA-1, the offeror must also certify in item 6 of the offer, that: (1) all producing plants specified in the offer are facilities operating under the provisions of the PPIA; (2) neither the offeror nor any of its officials are currently suspended or debarred as defined under 48 C.F.R. § 9.4; (3) the offeror will identify to the Contracting Officer all prospective subcontractors and suppliers subject to the PPIA and request a determination of responsibility prior to their performance; (4) the offeror will only utilize those subcontractors or suppliers in fulfilling the contract who have been approved by USDA; and (5) the offeror will include these certification requirements in every subcontract for the poultry component of this commodity.

Offerors are cautioned NOT to OFFER 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. 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 VIII.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 this commodity. **Contractors delivering late on contract(s) must immediately notify the Contracting Officer of late deliveries and how soon delivery can be expected. Additionally, if the Contractor intends to request an extension of time due to causes beyond the control or negligence of the Contractor, such notice must be made to the Contracting Officer 3 business days in advance of a bid opening in which the Contractor wants to bid. Notification and request for extension must include (1) documentary evidence of causes beyond Contractor's control for each day requested, (2) a production report of completed and/or expected production, including pounds and dates, and (3) actual or expected shipment or delivery dates by Delivery Order (D/O) numbers. (See Article 68 of USDA-1).** Offeror must certify to timely performance on outstanding contracts in each offer. A determination that the late performance is beyond the control of the Contractor or the Contractor's subcontractor must be made by the Contracting Officer prior to bid opening. An offeror may be deemed nonresponsible if the offeror, on other contracts with USDA, is shipping/delivering late and the late shipment/delivery is not due to causes beyond the Contractor's control or negligence. This provision is a deviation from 48 C.F.R. § 9.103(b) and § 19.6.

An offeror's false certification may result in rejection of the offer, suspension and debarment, termination of the contract, liability for damages under the provisions of USDA-1, civil damages, and criminal prosecution.

With respect to purchases under the 8(a) program, the conditions and clauses contained in the Agreement Between USDA, Agricultural Marketing Service (AMS), and the Small Business Administration (SBA) (Interagency Agreement), apply to the 8(a) Contractor as defined in 48 C.F.R. § 19.800(a). For the purposes of purchases made under the 8(a) program, reference to "Contractor," in all USDA contract documents, means the 8(a) Contractor. In accordance with the Interagency Agreement as authorized under 48 C.F.R. § 19.800(c), SBA has delegated responsibility to USDA for the administration of contracts awarded to 8(a) Contractors with complete authority to take any action on behalf of the Government under the terms and conditions of the contract. In the event of non-performance of a contract by an 8(a) Contractor or its subcontractor, it is agreed that no further contracts will be offered by the SBA to that Contractor during the current fiscal year or until claims for damages resulting from non-performance are settled.

E. Buy American Certification

End products furnished must be of domestic origin as defined in Section I.F., below. To the extent, if any, that this provision is a deviation from 48 C.F.R. part 25 and for the purposes of this Announcement, this provision supersedes Articles 34 and 49 of USDA-1.

F. Domestic Products

The commodity must be of 100 percent domestic origin, meaning that it was produced and processed from poultry and/or egg 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 this Announcement. This plan must be made available to a representative of the Grading Branch, Poultry Programs, AMS, USDA (Grader), and the Contracting Officer or agent thereof upon request. The Contractor must ensure that both the Contractor and 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 Article 76 of USDA-1. Contractor agrees to include this domestic origin certification clause in all subcontracts for products used in fulfilling contracts awarded under this Announcement. The burden of proof of compliance is on the Contractor. Failure to observe this requirement may lead to actions including, but not limited to, the assessment of actual and/or liquidated damages, suspension or debarment, contract termination, penalties at Title 18, Section 1001 of the US Code concerning falsification of information, or other remedies in favor of the Government as may be allowed by law. The attached form (EXHIBIT 3) must be completed for each contract awarded and be presented to a representative of the Grading Branch, Poultry Programs, AMS, USDA (Grader) at the processing facility prior to performance in this program, and the Contracting Officer or agent thereof upon request.

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

1. If the Government receives information that a Contractor or 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, 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 -
 - (1) 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

(2) 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.

H. Service of Protest

1. Protests, as defined in 48 C.F.R. § 33.101, 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 by obtaining written and dated acknowledgment of receipt.

2. The copy of any protest shall be received in the office designated above within 1 day of filing a protest with the GAO.

I. Requirements

Requirements contracts, as described in 48 C.F.R. § 16.503, will be awarded for frozen, fully cooked, breaded chicken nuggets and patties for the delivery periods stated in the Invitation. The quantities of chicken nuggets and patties in the Invitation are estimates only and are not purchased by this contract. The quantities specified are the maximum orders to be purchased, and may be subject to adjustment based on changes in the needs by recipient agencies.

Delivery or performance must be made only as authorized by the Notice to Deliver (N/D) issued in accordance with the Ordering clause (48 C.F.R. § 52.216-18). Subject to any limitation in the Delivery-Order Limitations clause (48 C.F.R. § 52.216-19) or elsewhere in this Announcement, the Contractor must furnish to USDA all commodity as specified in the Commodity Specification and called for by the N/D issued in accordance with the Ordering clause.

The commodity must not be processed and packaged more than 30 days prior to the first day of the delivery period.

J. Ordering

N/D's for domestic deliveries will be issued by the Kansas City Commodity Office (KCCO) not later than 30 days prior to the first day of the delivery period. N/D's for offshore deliveries will be issued by the KCCO not later than 7 days prior to the first day of the delivery period. Products to

be furnished under this Announcement shall be ordered by issuance of N/D's by KCCO. An N/D is considered "issued" when KCCO deposits the notice in the mail. All N/D's are subject to the terms and conditions of this Announcement.

AMS reserves the right to suspend ordering should marketing conditions warrant.

K. Pricing

Offerors will bid only one processing cost per pound for the entire invitation, and one transportation cost per pound to each State listed on the invitation (See Exhibit 4).

1. Base Price

a. The base price is intended to reflect the approximate value of the chicken contained as ingredients in the finished chicken nuggets and patties. The base price per pound will be 1.2 times the 12-city price for broiler chickens published by the USDA Poultry Market News on the Monday of the week each N/D is issued. The average price will be expressed on a per-pound basis, rounded to the fourth decimal place.

b. If no price is quoted for the specific week an N/D is issued, the base price will be the last published price for the 12-city broiler market.

c. Inquiries on the 12-city price for broiler chicken should be directed to Poultry Programs, Market News Branch, by telephoning (202) 720-6911.

2. Offer Price

a. Offerors will bid only one processing cost per pound for the entire invitation, and one transportation cost per pound to each State listed on the invitation. These costs, added together, will constitute the offer price. The offer price is intended to reflect the cost of manufacturing chicken into chicken nuggets and patties and other costs, and reflects the difference between the base price and the final price to produce and deliver the specific end products.

b. The offer price will be added to the base price for each N/D to determine the price per pound to be paid.

c. Offers must specify only one transportation cost per line item listed on the invitation. Line items with more than one cost listed will not be considered.

II. SUBMISSION OF OFFERS

A. Where and How to Submit Offers

Offers must be submitted by mail, FAX, or hand delivery.

FAX: **202-205-1977** (24 Hours)
 Verification: 202-720-2104 (7:00 am - 4:15 pm,

Washington, DC time, Mon.-Fri.)

If the offer is sent by mail or hand delivered, place the notation "Do not open until prescribed time per Announcement PY-271" on lower left-hand corner of the envelope. Offerors may contact the Contracting Officer to verify receipt of a mailed offer prior to the time set for receipt of offers by telephoning (202) 720-7693.

Offers, modifications, or withdrawals of offers must be addressed as follows:

For U.S. Postal Service Priority and Express Mail, Mailed Offer Form, and Private Express Services (DHL, Federal Express, etc.) -

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

Offers, modifications, or withdrawals of offers must be received in the USDA-AMS-Management Services Division (MSD)-Communications Office (CO), the USDA mailroom, or, if hand delivered, the office of the Contracting Officer, Room 3941-South, in Washington, DC, not later than **12 noon, Central Time**, on the Monday as indicated in the Invitation. In the event Monday falls on a nonworkday for USDA employees in the District of Columbia, offers, modifications, or withdrawals are to be received not-later-than **12 noon, Central Time**, on the next succeeding business day. Whether an offer, modification, or withdrawal is received within the time limitation will be determined by the latest time recorded by the USDA-AMS-MSD-CO (if by fax), or, in the case of mail, the time stamp recorded by the USDA mailroom in Washington, DC. For hand-delivered offers, modifications, or withdrawals, the time of receipt will be determined by the time recorded by the office of the Contracting Officer in Washington, DC.

B. What to Submit

An offeror must have completed and submitted a Standard Form-129 and Certifications, Representations, and Warranties (Appendix-1), which must be signed by a duly authorized officer of the company, prior to making an offer. If not already received, copies of Standard Form-129 and Appendix-1 may be obtained from the Contracting Officer or the commodity

procurement website at www.ams.usda.gov/cp. An offeror who has previously provided a Standard Form-129 must furnish updated information only.

The offeror must complete all portions of the Standard Form-129 (except item 18) in accordance with the attached EXHIBIT 1 and include the following information for Items 4, 8, 10, 16B, 19, and 20:

Items 4 and 8: The Federal inspection plant number.

Item 8: Identify all affiliates, including any parent company.

Item 10: The products the offeror is interested in supplying, weekly volume of production, and percent of capacity available for USDA contracts.

Item 16B: Identify the freezer or warehouse to be used and its storage capacity.

Items 19 and 20: Must be an officer of the company, as identified in item 7.

An offer must include each of the following numbered items in the order listed (See EXHIBIT 2 of this Announcement for examples of offers.)

1. Offer is made subject to Announcement PY-271; Appendix-1; the Commodity Specification for Chicken Nuggets and Chicken Patties dated July 2003; Invitation No. _____; and USDA-1.

NOTE: If documents are subsequently amended, offers must reference such amendments.

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

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

3. Processing Cost.

NOTE: Offers will be made and considered only for one processing price per pound.

4. Item number listed on applicable Invitation, destination*, and transportation price per pound to specific destination for each processing plant, if more than one processing plant will be used.

***OFFEROR MAY, AT OFFEROR'S OWN RISK, EXCLUDE THE NAME OF THE DESTINATION. ERRORS IN ITEM NUMBERS WILL NOT BE APPARENT TO THE CONTRACTING OFFICER.**

NOTE: a. Offers will be made and considered only for one transportation cost for each processing plant for each item number listed on the invitation.

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

c. Offers should include as many item numbers as desired.

d. Offers must not indicate the number of purchase

units by item number or by delivery option.

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

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

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

7. Timely performance certification. Answer (a), (b), (c), or (d) as appropriate.

(a) The offeror (HAS) completed required performance of any contracts with USDA prior to this bid opening; OR

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

(c) The offeror (HAS NOT) completed required performance of any contracts with USDA prior to this bid opening and (HAS NOT) notified the Contracting Officer; OR

(d) The offeror (DOES NOT) have outstanding contracts with USDA.

8. Certificate of Independent Price Determination.

(1) Offeror certifies that the person submitting this bid, as identified in item 12, below, (IS) the person in offeror's organization responsible for determining the prices being offered in this bid, and that the signatory (HAS NOT) participated and (WILL NOT) participate in any action contrary to subparagraphs (a)(1) through (a)(3) of the "Certificate of Independent Price Determination" clause of Article 30 of USDA-1; or

(2) Offeror certifies that the person submitting this bid, as identified in item 12 below, (IS) an authorized agent for (name of principal), and (DOES) certify that the principal named above has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of the "Certificate of Independent Price Determination" clause of Article 30 of USDA-1; and, as agent, (HAS NOT) personally participated and (WILL NOT) participate in any action contrary to subparagraphs (a)(1) through (a)(3).

9. Offeror (a) (HAS) (HAS NOT) submitted to the Contracting Officer issuing

this solicitation, Annual Certifications, Representations, and Warranties (Appendix-1) (date Appendix-1 was signed by officer). The Appendix-1 is current, accurate, and complete as of the date of this bid, except as follows (insert changes that affect only this solicitation; if "none," so state); and offeror (b) (HAS) (HAS NOT) enclosed its Appendix-1.

10. Offeror (DOES) (DOES NOT) certify that the information previously submitted on the Solicitation Mailing List Application (SF-129) is accurate and is a part of this offer; and offeror makes the certification of responsibility required by Section I.D. of Announcement PY-271 and the certifications, representations, and warranties provided in Parts C and D of USDA-1.

11. 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).

12. Signature and title of person, if mailed, faxed or hand carried. (See Article 6 of USDA-1).

EXHIBIT 2 provides an example of how offers wires may be submitted.

III. ACCEPTANCE OF OFFERS

The Government contemplates award of a requirements contract resulting from this solicitation. Contracts will be awarded to responsible offerors whose offers 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 prepaid telegram or FAX filed at Washington, DC, not later than midnight, Washington, DC time, the Friday following the day for receipt of offers. The actual time of award is the time stamped on the acceptance wire at time of receipt by the USDA-AMS-Management Services Division (MSD)-Communications Office (CO). A notice of award will be issued in the form of a Food Purchase Report or other public announcement posted at the Department's Office of Public Affairs, News Division, after award and after 3 p.m., Washington, DC time, on the day of acceptance. After award information is posted, inquiries may be made to

a USDA-AMS Poultry Programs Market News Office or the Contracting Officer. Failure to accept an offer will constitute rejection.

Acceptance as specified above will result in a binding contract without further action by either party. The actual time of award described herein is a deviation from 48 C.F.R. § 14.408-1. Information on awards is also available electronically through the USDA, AMS Home Page at <http://www.ams.usda.gov/cp> after award.

IV. PROVISIONS OF CONTRACT

The contract consists of this Announcement including Appendix-1, the Notice to Deliver, the applicable Invitation, the Commodity Specification, the Contractor's offer, Standard Form-129, 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 inconsistent, the following priority order will prevail: Notice to Deliver, Invitation, Announcement, Specification, and USDA-1.

V. CONTRACT COMPLIANCE

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

VI. SHIPMENT AND DELIVERY

Shipment and delivery must be made in accordance with this Announcement; the Commodity Specification; the applicable Invitation; and Articles 56, 57, and 64 of USDA-1, as amended by this Announcement, and the Form KC-269 (Notice to Deliver) issued by KCCO. 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 Contractor and consignee and any additional charges for special delivery terms are between the consignee and the Contractor. Any charges invoiced to USDA for additional delivery services will be denied.

Transportation cost adjustments for diverting product to new destinations will be made in accordance with the following provisions:

A. Truck

If USDA orders delivery to a destination other than the original destination named in the contract, transportation costs adjustments will be made at the rate of \$1.10 per mile per delivery unit based on the difference in miles between (1) the shipping point and new destination and (2) the shipping point and original destination.

Applicable mileage cannot exceed that published in the most recent "Household Goods Carrier's Mileage Guide" issued by the Household Goods Carrier's Bureau.

The following is an example illustrating the transportation cost adjustment for a change in destination:

	<u>Point</u>	<u>Points</u>
1	Anytown, NC (shipping point)	
2	Hometown, NC (original destination)	1 to 2 = 40 miles
3	Midtown, NC (new destination)	1 to 3 = 120 miles

For this delivery unit, USDA would increase payment to the Contractor \$88 to compensate for 80 additional miles from the shipping point to the new destination at \$1.10 per additional mile. In the event the mileage is less when a change in destination is ordered, the payment would be reduced pursuant to Article 64 of USDA-1.

B. Railcar or Piggyback

Transportation costs adjustments for diverting product to the new destination using railcar or piggyback will be made in accordance with Article 64 of USDA-1.

C. Early Delivery

The Contractor may deliver early upon approval of the KCCO. Approval may be obtained by telephoning (816) 926-6068. Approval is contingent of the recipient's concurrence to accept early delivery and upon a USDA Grader being available to perform necessary checkloading and final acceptance duties.

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

A. Loss Due to Deterioration or Spoilage

The Contractor is liable for losses due to deterioration or spoilage for which the Contractor is responsible, which are discovered within 4 months of date of delivery to USDA in accordance with 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 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. 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.

VIII. LIQUIDATED DAMAGES

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

Liquidated damages for failure to deliver the commodity during the delivery period due to late mailing of Notice to Deliver by the KCCO will be payable in accordance with Article 65 of USDA-1, as amended by Section IV., and will be at the rate of \$0.0025 per pound net per calendar day.

B. Compensation to USDA for Delay in Delivery

Liquidated damages for failure to deliver the commodity during the delivery period due to causes other than a late mailed Notice to Deliver will be payable in accordance with Article 67 of USDA-1, as amended by Section IV., at the rate of \$0.0025 per pound net per calendar day. When deliveries are made by contract carrier or vendor's own vehicle, the date shown on the Bill of Lading or destination USDA Poultry Products Inspection Certificate will be considered as the date of delivery. However, liquidated damages for late delivery will not be assessed on commodity delivered by railcar or piggyback if the bill of lading was issued prior to the beginning of the delivery period. Timely delivery is important to fulfill the nutritional and dietary needs of persons for whom the commodity is intended. It is difficult to quantify the value of nutritional and dietary needs, but the parties involved agree that the above rate is a reasonable quantification of such value. In addition, liquidated damages include, but are not limited to, compensation for the impairment of USDA's credibility in administering programs which are dependent on timely delivery of commodities.

IX. INVOICES AND PAYMENT

Invoicing and payment will be handled in accordance with Article 70, USDA-1, except that a properly prepared invoice package must include the following supporting documents:

- A. USDA Form KC-269 (Notice to Deliver) or commercial invoice form;
- B. Origin USDA Poultry Products Inspection Certificate issued at time of checkloading; and
- C. 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 Poultry Products Inspection Certificate evidencing delivery of product.

The properly prepared invoice package must be mailed or delivered to the Kansas City Finance Office (KCFO) at the address shown in Section X.C.

When applicable, the Contractors will note on their invoices, "Invoice subject to adjustment in transportation costs." (See Section VI.)

Interest will be paid in accordance with the provisions of the Prompt Payment Act (31 U.S.C.

§ 3902 et seq.) if payment is made beyond the seventh day after the date of 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 for the product.

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.

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

X. INQUIRIES

A. Inquiries pertaining to USDA-1, this Announcement, Appendix-1, Commodity Specification, and applicable Invitation(s) should be directed to:

Contracting Officer
 USDA/AMS/Poultry Programs
 1400 Independence Avenue, SW
 Commodity Procurement Branch STOP 0260
 Washington, DC 20250
 Telephone: (202) 720-7693

B. Inquiries concerning shipping instructions 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) 926-6068

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

Howard M. Magwire
 Deputy Administrator

PY-271

Attachments

EXHIBIT 1

Sample 129 form to be inserted.

Sample 129 form (back) to be inserted.

EXHIBIT 2

Sample Format for Submitting Offers

The following formats, which contain 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 in the following examples (see Section II.B.):

1. Offer is made subject to Announcement PY-271; Appendix-1; the Commodity Specification for Chicken Nuggets and Chicken Patties dated July 2003; Invitation No. _____; and USDA-1¹
2. Potomac Poultry Co.
1776 Mt. Vernon Avenue., NW
Washington, DC 20250
Telephone No. 202-455-3156 FAX No. 801-447-7693
3. Processing cost: \$0.9000 per lb.
4. Transportation Costs ALTERNATE FORMAT²

(1) Michigan	\$0.1500 per lb.	(1) \$0.1500 per lb.
(2) New Jersey	\$0.1700 per lb.	(2) \$0.1700 per lb.
Patties (Transportation Costs)		
(5) Michigan	\$0.1500 per lb.	(5) \$0.1500 per lb.
5. (a) Potomac Poultry Company
1776 Mt. Vernon Avenue, SE
Washington, DC 20250
(Lincoln County) (b) Cross Town Warehouse
1120 Eastern Avenue, SW
Washington, DC 20250
6. G. Washington
Potomac Poultry Co.
1176 Mt. Vernon Avenue., NW
Washington, DC 20250
Telephone: 202-263-2353
7. (a) has
8. (Select a or b as appropriate)
(a) is, has not, will not
9. (a) has, dated July 1, 2003³
(b) has not
10. does
11. no
12. _____
M. Washington, President⁴

¹ If either the Announcement, Invitation, Appendix-1, Specification, or USDA-1 is subsequently amended, show appropriate amendment numbers.

² The Offeror may use either format shown in Item 4 in submitting a bid. However, if the ALTERNATE FORMAT is used, it is at THE CONTRACTOR'S RISK because errors in item numbers will not be apparent to the Contracting Officer.

³ Must be date Appendix-1 was signed by an officer of the company.

⁴ Must be an officer identified in Item 7 or representative authorized to sign offers identified in Item 9 of current Standard Form 129 filed with the Contracting Officer. Bids submitted by fax, mail, or hand delivered must be signed.

EXHIBIT 3

DOMESTIC ORIGIN CERTIFICATION

This form must be completed for each contract awarded and be presented to a representative of the Grading Branch, Poultry Programs, AMS, USDA (Grader) 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.

Announcement Number: _____

Contract 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 4
 SAMPLE INVITATION

ANNOUNCEMENT : PY271
 INVITATION : 001
 COMM GROUP : 22 CHICKEN, FROZEN
 COMM TYPE : 23 CHICKEN NUGGETS, FROZEN
 PACK SIZE : 30 30 LB CTN

ITEM NO	DESTINATION CITY	ST	DELIVERY DATE	MINIMUM QUANTITY	MAXIMUM QUANTITY	TRANS RESTR
001	MICHIGAN					
	LANSING	MI	8/1-15/03	39,000	117,000	
	DETROIT	MI	10/1-15/03	78,000	156,000	TRUCK ONLY
002	NEW JERSEY					
	PORT NEWARK	NJ	8/1-15/03	39,000	117,000	TRUCK ONLY
	VINELAND	NJ	8/16-31/03	78,000	156,000	TRUCK ONLY

COMM TYPE : 30 CHICKEN PATTIES, FROZEN
 PACK SIZE : 30 30 LB CTN

ITEM NO	DESTINATION CITY	ST	DELIVERY DATE	MINIMUM QUANTITY	MAXIMUM QUANTITY	TRANS RESTR
003	MICHIGAN					
	LANSING	MI	8/1-15/03	39,000	117,000	
	DETROIT	MI	10/1-15/03	78,000	156,000	TRUCK ONLY
004	NEW JERSEY					
	PORT NEWARK	NJ	8/1-15/03	39,000	117,000	TRUCK ONLY
	VINELAND	NJ	8/16-31/03	78,000	156,000	TRUCK ONLY

---SAMPLE---

 Dennis J. Pearson
 Contracting Officer

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