

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30**

1. REQUISITION NUMBER PAGE 1 OF 52

2. CONTRACT NO. 3. AWARD/EFFECTIVE DATE 4. ORDER NUMBER 5. SOLICITATION NUMBER 2000003370 6. SOLICITATION ISSUE DATE 05/29/2015

7. FOR SOLICITATION INFORMATION CALL: a. NAME Christina Sample, Contract Specialist b. TELEPHONE NUMBER (No collect calls) 202-260-9184 8. OFFER DUE DATE/ LOCAL TIME 06/15/2015, 01:00 pm Central Time

9. ISSUED BY CODE United States Department of Agriculture Agricultural Marketing Service, Commodity Procurement Staff 1400 Independence Avenue, SW Room 3522-S, STOP 0239 Washington, DC 20250-0239 10. THIS ACQUISITION IS UNRESTRICTED OR SET ASIDE: Partial FOR: See B(1) SMALL BUSINESS WOMAN-OWNED SMALL BUSINESS (WOSB) HUBZONE SMALL BUSINESS ECONOMICALLY DISADVANTAGED WOMEN OWNED SMALL BUSINESS (EDWOSB) SERVICE-DISABLED VETERAN - 8(A) OWNED SMALL BUSINESS NAICS: 311421 BUSINESS SIZE STANDARD: 500 Employees

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED SEE SCHEDULE 12. DISCOUNT TERMS 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION RFQ IFB RFP

15. DELIVER TO CODE See paragraph B(10)(d) 16. ADMINISTERED BY CODE See Block 9

17a. CONTRACTOR/OFFEROR CODE FACILITY CODE 18a. PAYMENT WILL BE MADE BY CODE See Block 9

TELEPHONE NO. 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED SEE PARAGRAPH C(18)(g)

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Product: Canned Fruit and Frozen Fruit (see schedule), per USDA Specification Contract Type: Firm-Fixed-Price (FFP), Indefinite Delivery, Indefinite Quantity (IDIQ) Period of Performance: Date of Award to 09/30/2016 See Schedule on the following pages.				

25. ACCOUNTING AND APPROPRIATION DATA 26. TOTAL AWARD AMOUNT (For Govt. Use Only)

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ARE ARE NOT ATTACHED
 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ARE ARE NOT ATTACHED

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____, YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)

30b. NAME AND TITLE OF SIGNER (Type or print) 30c. DATE SIGNED 31b. NAME OF CONTRACTING OFFICER (Type or print) James D. Sprandel, Contracting Officer 31c. DATE SIGNED

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Proposal Submission Checklist

SF 1449:

_____ Fill in Block 17a (Contractor Information; Code and Facility Code not required)

_____ Sign in Block 30a, print name in Block 30b, and date in Block 30c

_____ Upload in PDF format into WBSCM

Provide acknowledgement of any/all amendments (SF-30)

_____ Fill in Block 8 (Contractor Information)

_____ Print name in Block 15a, sign in Block 15b, and date in Block 15c

_____ Upload in PDF format into WBSCM

Submit proposal parts specified in section E.1 of solicitation

_____ Proposal Part 1 – Technical Information, uploaded in PDF format into WBSCM

_____ Proposal Part 2 – Management and Workforce Practices and Policies, uploaded in PDF format into WBSCM

_____ Proposal Part 3 – Past Performance Information, uploaded in PDF format into WBSCM

_____ Proposal Part 4 – Prices

_____ Offer Prices – Entered directly into WBSCM

_____ Constraints – Entered directly into WBSCM

Please verify that you have included the above specified requirements for a complete proposal submission. Failure to include the above specified requirements may deem the offeror non-responsive. If you have any question regarding the specified requirements please refer to the solicitation or contact the contract specialist identified in block 7a and 7b of the SF1449 (first page) of this solicitation.

B) SCHEDULE

1) Contract Line Item Numbers (CLINS)

a) **Please see excel file titled “Part B – Schedule Jan 2016 – Sept 2016” attached to the solicitation in WBSCM.**

Note: Pricing shall be the same for all delivery points within each State and be inclusive of all delivery charges, including multiple stops. Trucks may have from one to three delivery stops. If multiple delivery stops are required and some of the stops are in different States, the portion of the load being delivered within each State shall be at the price applicable to that State.

b) Partial Set-Asides are as follows:

Material Number	Supplies/Services	Set-Aside	Percent
100209	APRICOTS HALVES EX LT CAN-6/10	SDVOSB*	10%
100210	APRICOT HALVES CAN-24/300	SDVOSB*	10%
100212	MIXED FRUIT EX LT CAN-6/10	SDVOSB*	10%
100211	MIXED FRUIT CAN-24/300	SDVOSB*	10%
100216	APRICOTS DICED PEELED EX LT CAN-6/10	SDVOSB*	10%
100218	PEACHES CLING SLICES CAN-24/300	SDVOSB*	10%
100219	PEACHES CLING SLICES EX LT CAN-6/10	SDVOSB*	10%
100220	PEACHES CLING DICED EX LT CAN-6/10	SDVOSB*	10%
110233	MIXED FRUIT EX LT SUCROSE CAN-6/10	SDVOSB*	10%
110234	PEACHES CLING DICED EXLT SUCROSE CAN-6/10	SDVOSB*	10%
110236	PEACHES CLING SLC EXLT SUCROSE CAN-6/10	SDVOSB*	10%

*Service Disabled Veteran Owned Small Business

This acquisition is unrestricted for all other materials.

2) **ALL OFFERORS MUST BE QUALIFIED PRIOR TO AWARD AND SUBMISSION OF ANY DELIVERABLES UNDER THIS CONTRACT.**

Information concerning qualification requirements can be obtained from the source identified in Section C under FAR 52.209-1, Qualification Requirements.

3) All contracts issued will be IDIQ contracts and orders will be placed through the issuance of individual delivery orders in accordance with the terms and conditions listed in this document. The Guaranteed Minimum (G. Min) quantity for each product will be one full truckload, the Estimated Quantities are based on prior year demands, and the Maximum Quantities are the Estimated Quantities increased by fifteen percent (15%). AMS anticipates making multiple awards from each line item in accordance with offerors' identified delivery constraints therefore, award may be made to an offeror for all, some, or none of the NTE quantities identified for each line item.

Delivery orders above the Estimated Quantities will be issued by mutual agreement between the Government and the Contractor. The Government anticipates purchasing the Estimated Quantities; however, the contractor is cautioned that the Government does not

guarantee that any product in excess of the guaranteed minimum indicated in the attached schedule will be ordered under this contract.

Award will be made by individual CLIN based on each offeror's proposed price, delivery constraints per material, and delivery period identified by each offeror in their proposal.

- 4) Offerors may enter constraints, to include the total maximum number of truckloads for the life of the contract. Entering constraints per delivery period, as identified in paragraph B.10.c, will be at the discretion of the offeror. Offerors must indicate delivery periods in which shipments cannot be made by entering a constraint of zero, "0", for that delivery period. If no constraints are entered, AMS will assume that there are no limits to vendor's capacity to deliver up to their total awarded quantity in any delivery period.
- 5) Offerors will submit a unit price in WBSCM including all costs associated through final delivery for all CLIN (Contract Line Item Number) items by State, that they propose offering during the period of performance (See Part B – Schedule Jan 2016 – Sept 2016 for CLINs). Offerors are required to enter a price for each and every State.
- 6) Award will be made by individual CLIN based on the best value using the trade-off process and taking into account the delivery constraints, per material and delivery period, identified by each offeror, in their proposal. The Government reserves the right to make multiple awards.
- 7) USDA will accept product produced in the preceding year as long as it was produced according to the applicable Commodity Specification (see Exhibit 1) and meets the requirements within. Current year production must be shipped as soon as it becomes available.
- 8) When delivery instructions state that the contractor's commodity is to be trans-loaded at load port into a 40' Ocean Container, the contractor is required to configure the commodity being shipped on no more than 20 pallets. If the contractor is shipping in a trailer larger than 40', they are also required to meet the aforementioned configuration requirement. If the contractor fails to follow these instructions, any damage or charges incurred will be at the contractor's expense, no exceptions. This includes damage due to improper blocking or bracing during transit and charges for re-stacking/re-configuration of pallets.
- 9) Some ports may charge wharfage fees. Offerors are responsible for researching and paying all costs associated with transportation fees including wharfage fees.
- 10) Delivery shall be:
 - a) FOB Destination;
 - b) Inclusive of all transportation costs, including multiple stops;
 - c) Within the period specified in each delivery order. (Delivery orders will be issued for two half-month delivery periods at a time at least 45 days prior to the first day of the first delivery period. Half-month periods will be between the first and fifteenth of the month or the sixteenth to the end of the month.) Also, the contractor shall provide an advance ship notice in compliance with the included "Shipment and Delivery" section; and

- d) Within the states identified in the schedule with specific delivery locations identified in each delivery order.
- 11) Period of Performance: The period of performance under this contract is the date of award to 09/30/2016.
- 12) Place of Acceptance: Final acceptance of the product shall be at the destination specified under the contract/purchase order.
- 13) Questions regarding this solicitation/contract will only be addressed in writing via email to: Christina Sample, Christina.Sample@ams.usda.gov.

C) CONTRACT CLAUSES

1) FAR 52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)

2) FAR 52.252-2 Clauses Incorporated by Reference (FEB 1998)

This contract incorporates one or more 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 clause may be accessed electronically at this address:

<https://www.acquisition.gov/>

3) FAR 52.212-4 Contract Terms and Conditions – Commercial Items (DEC 2014)

- Paragraph (a) of FAR 52.212-4 is superseded by FAR 52.246-2 Inspection of Supplies – Fixed Price (AUG 1996)
- Paragraph (g) of FAR 52.212-4 is superseded by the “Invoices and Payment Process” identified in the “Invoices and Payment” section of this document.

4) FAR 52.215-2 Audit and Records – Negotiation (OCT 2010)

5) FAR 52.209-1 Qualification Requirements (FEB 1995) (See EXHIBIT 6 – Qualification Requirements for Prospective Contractors Selling Commodities to USDA)

- (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. Please contact:

(Name) Christina Sample
(Email) Christina.Sample@ams.usda.gov

- (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 N/A _____

Source's Name _____

Item Name _____

Service Identification N/A _____

Test Number N/A _____ (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.

6) FAR 52.211-11 Liquidated Damages – Supplies, Services, or Research and Development (SEP 2000)

(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 **\$.0025 per pound** 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.

Act.

7) FAR 52.232-19 Availability of Funds for the Next Fiscal Year (APR 1984)

Funds are not presently available for performance under this contract beyond 9/30/2015. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond 9/30/2015, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

8) FAR 52.232-40 Providing Accelerated Payment to Small Business Subcontractors (DEVIATION) (DEC 2013)

This clause implements the temporary policy provided by OMB Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012.

(a) Upon receipt of accelerated payments from the Government, the contractor is required to make accelerated payments to small business subcontractors to the maximum extent practicable after receipt of a proper invoice and all proper documentation from the small business subcontractor.

(b) Include the substance of this clause, including this paragraph (b), in all subcontracts with small business concerns.

(c) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

9) FAR 52.233-2 Service of Protest (SEP 2006)

Protests, as defined in section 33.101 of the Federal Acquisition Regulations, 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 Commodity Procurement Division, Room 3932, STOP 0256; 1400 Independence Ave, SW, Washington, DC 20250-0256.

The copy of any protest shall be received in the office designated above within 1 day of filing

10) FAR 52.252-3 Alterations in Solicitations (APR 1984)

Portions of this solicitation are altered as follows:

a. 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, goods receipt entered in Web Based Supply Chain Management (WBSCM), 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 at the destination specified in the contract, 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:

Alongside vessel within reach of its loading tackle,

or

On the dock designated by USDA if the vessel is not available, unless the 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.

11) FAR 52.247-36 F.a.s. Vessel—Port of Shipment (APR 1984)

- (a) The term “f.a.s. vessel, port of shipment,” as used in this clause, means free of expense to the Government delivered alongside the ocean vessel and within reach of its loading tackle at the specified port of shipment.
- (b) The Contractor shall –
 - (1) (i) Pack and mark the shipment to comply with contract specifications; or
(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
 - (2) (i) Deliver the shipment in good order and condition alongside the ocean vessel and within reach of its loading tackle, at the point of delivery and on the date or within the period specified in the contract; and
(ii) Pay and bear all applicable charges, including transportation costs, wharfage, handling, and heavy lift charges, if necessary, up to this point;
 - (3) Provide a clean dock or ship’s receipt;
 - (4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point specified in the contract; and
 - (5) At the Government’s request and expense, assist obtaining the documents required for (i) Exportation; or (ii) Importation at destination.

12) FAR 52.247-48 F.o.b. Destination—Evidence of Shipment (FEB 1999)

If this contract is awarded on a free on board (f.o.b.) destination basis, the Contractor—

Shall not submit an invoice for payment until the supplies covered by the invoice have been delivered to the destination; and

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:

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;

If transportation is accomplished by parcel post, a copy of the certificate of mailing;
or

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.

The Contractor is required to submit evidence of shipment and receipt documentation, along with a signed bill of lading with its invoice.

13) FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (MAR 2015)

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

- (1) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Dec 2014)
- (2) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).
- (3) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)(19 U.S.C. 3805 note).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (41 U.S.C. 3509).

52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Aug 2013) (31 U.S.C. 6101 note).

52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013)(41 U.S.C. 2313).

52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

52.219-8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)).

52.219-9, Small Business Subcontracting Plan (OCT 2014) (15 U.S.C. 637(d)(4)).

52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

52.219-28, Post Award Small Business Program Representation (Jul 2013) (15 U.S.C. 632(a)(2)).

52.222-3, Convict Labor (June 2003) (E.O. 11755).

52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jan 2014) (E.O. 13126).

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

52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

52.222-35, Equal Opportunity for Veterans (Jul 2014)(38 U.S.C. 4212).

52.222-36, Affirmative Action for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

52.222-37, Employment Reports on Veterans (Jul 2014) (38 U.S.C. 4212).

52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

52.223-18, Contractor Policy to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).

52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: None indicated.

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in

excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, or the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1), in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clauses at:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (41 U.S.C. 3509).
(ii) 52.219-8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) [Reserved]

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Veterans (Jul 2014) (38 U.S.C. 4212).

(vi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(viii) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. Chapter 67)

(ix) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. Chapter 78 and E.O. 13627).

(x) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. Chapter 67).

(xi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. Chapter 67).

(xii) 52.222-54, Employment Eligibility Verification (Aug 2013).

(xiii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

14) Agricultural Acquisition Regulations (AGAR) Clauses Incorporated by Reference and Full Text

AGAR 452.246-70 Inspection and Acceptance (FEB 1988)

AGAR 452.246-70 Inspection and Acceptance – Alternate I (FEB 1988)

AGAR 452.247-70 Delivery Location (FEB 1988)

AGAR 452.247-71 Marking Deliverables (FEB 1988)

AGAR 452.247-72 Packing for Domestic Shipment (FEB 1988)

AGAR 452.209-71 Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants (FEB 2012)

(a) This award is subject to the provisions contained in sections 738 and 739 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, P.L. No. 112-55, Division A, as amended and/or subsequently enacted, regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by accepting this award the contractor acknowledges that it –

(1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and

(2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal or State law within 24 months preceding the award, unless a suspending and debarring official of the United States Department of Agriculture has considered suspension or debarment of the awardee, or such officer or agent, based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government.

(b) If the awardee fails to comply with these provisions, USDA, AMS, may terminate this contract for default and may recover any funds the awardee has received in violation of sections 738 or 739, as amended and/or subsequently enacted.

15) FAR 52.216-18 Ordering (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders/purchase orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the date of award through 9/30/2015.

(b) All delivery orders/purchase orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order/purchase order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods.

16) FAR 52.216-19 Order Limitations (OCT 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than **1 Truckload per half-month delivery period**, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor --

(1) Any order for a single item in excess of **TBD based on offeror's constraints**;

(2) Any order for a combination of items in excess of **TBD based on offeror's constraints**; or

(3) A series of orders from the same ordering office within **15** days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulations (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within **3** days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

17) FAR 52.216-22 Indefinite Quantity (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were

completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after **45 days following the end of the effective period of this contract.**

18)USDA/AMS Specific Requirements

a. Domestic Products

All products used in fulfilling contracts or delivery orders awarded must be of 100 percent domestic origin, meaning that they are produced and processed from 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 under this contract. 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 52.215-2.

The Contractor agrees to include this domestic origin certification clause in all subcontracts for products used in fulfilling contracts awarded under Contract. The burden of proof of compliance is on the Contractor.

Domestic origin verification requirements must be included in the Contractor's technical proposal, if applicable. Otherwise, prior to any work performed under the applicable contract or purchase order that was awarded, the attached form (**EXHIBIT 3 – Domestic Origin Certification**) must be completed, and must be presented to an AMS representative, the Contracting Officer, or agent thereof upon request.

b. Food Defense Requirements

Potential Contractor(s) and subcontractor(s) must have a 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, as applicable: (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).

Prior to a contract or purchase order award, the documented and operational food defense plan will be audited by USDA, AMS. For fruit and vegetable products, nonconformance(s) will be addressed prior to contract or purchase order award. Potential Contractors will have an opportunity to correct identified nonconformance(s) and modify their food defense plan. The frequency of any follow-up food defense audits will be

determined by the Contracting Officer. Approved food defense audit is valid for twelve (12) months from the date of approval.

Eligible suppliers who receive contracts must have their documented food defense plan and supporting documentation readily available for review by the Contracting Officer or AMS agents. Records may be maintained on hard copy or electronic media. However, records maintained as electronic media will be made available in printed form immediately upon request by AMS or its agents.

All inquiries concerning audit requirements and scheduling should be forwarded to your local Grading Division office for clarification. Furthermore, USDA will not grant/accept any waiver requests for the food defense audits. It is the responsibility of the contractor and/or subcontractor to schedule the audit in a timely manner to ensure it has been completed and approved prior to the award of any contract.

c. Web-Based Supply Chain Management (WBSCM) System

1. WBSCM Registration. Potential new suppliers must complete a WBSCM vendor registration form and meet all financial requirements prior to being entered into WBSCM. In addition, the firm must meet all technical requirements for producing the product prior to being able to submit offers in WBSCM. Refer to **EXHIBIT 6 - Qualification Requirements for Prospective Contractors Selling Commodities to USDA**. Instructions and additional information for new vendors are located on the AMS website at <http://www.ams.usda.gov/commoditypurchasing>.

A new supplier must designate a person(s) who will serve as the Central Vendor Administrator and a person(s) who is authorized to submit offers for the company during the approval process. Once approved, USDA will assign the roles in WBSCM and the vendor will be able to submit offers for those materials (commodities) that they are qualified to supply. In the event a vendor submits offers for materials they are not qualified to supply, the Contracting Officer will rule those offers as non-responsible and the offers will not be considered for those materials

The Corporate Vendor Administrator's responsibilities include: 1) entering all plant(s) and shipping point(s) that company plans to utilize for USDA production, 2) assigning plant/headquarter staff member(s) to the appropriate plant(s) and shipping point(s), and 3) assigning the roles to each staff member they will need to perform the various functions required in WBSCM.

Once the supplier has been approved and the proper role(s) assigned, they may access WBSCM to submit offers. The web address is: <https://portal.wbscm.usda.gov/irj/portal>.

2. Submission of Offers in WBSCM. Offers must be submitted via the Internet by accessing the WBSCM. **EXHIBIT 4** provides system and computer setting requirements for accessing WBSCM.

Offers submitted by any means other than WBSCM will be considered nonresponsive.

Once connected to WBSCM, follow the online procedures. Click on the "Help" button for detailed instructions on using the system, or contact the WBSCM Help Desk.

AMS will not be responsible for any failure attributed to the transmission of the offer data prior to being accepted and stored in WBSCM 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 the 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 offers on the offer due date due to high volume of internet traffic.

Offers, modifications, or withdrawals of offers must be received in WBSCM by the time prescribed in the applicable Solicitation. Whether an offer, modification, or withdrawal is received within the time limitation will be determined by the latest time recorded in WBSCM.

3. WBSCM OFFER FORM. Offers submitted in WBSCM must consist of the following areas: 1) response to attribute questions associated with the specific solicitation, 2) offer prices(s) on the site number(s) the firm want(s) to be considered for award, and 3) total quantity the company wants to be awarded (constraints in truck-lot or cases). All sections of the offer form must be completed, including prices and constraints, prior to final submission in WBSCM.

In addition, the offeror must attach all required documents to the vendor's offer in WBSCM, including but not limited to the offeror's technical proposal, additional cost proposal information and any supporting documents to the cost proposal, and past performance information.

Complete the certifications (attributes questions) using the following as a guide.

1. Offer certifies that the offer is made subject to the Item Description and Requirement (IDR); this Solicitation; the Agriculture Acquisition Regulations (AGAR); and the Federal Acquisition Regulations (FAR).
2. Timely Performance Certification: All products required under any existing USDA contract(s)/purchase order(s) or subcontract(s) with a not-later-than delivery date prior to this bid opening _____. Choose one:
 - (a) Have been delivered.
 - (b) Have not been delivered.
 - (c) Have not been delivered, but the Offeror has notified the Contracting Officer.
 - (d) There are no existing contracts.
3. 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 (FAR subpart 19.13).

4. Furnish name, title, phone number and e-mail address of person submitting this offer (must be an officer of the company or a person authorized to execute contracts on behalf of the offeror).

Note: There may be additional certification (attribute) questions depending on the material that is being offered.

d. Contract Compliance

The contractor must assure compliance with all requirements of this Contract and/or IDR prior to delivery 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 Solicitation and/or IDR. 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.

1. A copy of the original USDA Inspection and Grading Certificate issued at time of checkloading must accompany each shipment.

Each shipping container must be identified with a USDA Contract Compliance stamp with the applicable certificate number. A Grader, or other authorized personnel under the supervision of the Grader, will stamp one end of each shipping container prior to shipment. If there is inadequate space available on either end of the shipping container, the stamp may be applied to a side of the container.

e. Shipment and Delivery

Shipment and delivery must be made in accordance with this Contract, the Item Description and Requirement (IDR), and the applicable Delivery Order. The Contractor must complete the Advance Ship Notice (ASN) in WBSCM prior to delivery of the product to the awarded destination. Contractors are encouraged to create the ASN for the purchase order item number as soon as a delivery appointment has been scheduled, but not less than 24 hours. The Contractor must provide accurate information when creating the ASN. The ASN provides an alert to the appropriate recipient agency that the product will be shipped for a sales order.

The creation of the ASN does not relieve the Contractor or Subcontractor of their responsibility to obtain an unloading appointment. Delivery appointments shall be made as far in advance of expected delivery as possible, but not less than 48 hours prior to delivery.

USDA has provided an excel template in a comma delimited (csv) format that allows the Contractor to upload delivery order line items that will create multiple ASNs.

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.

1. 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 USDA, AMS certification agent or if applicable by a person authorized by the company to act on its behalf. 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) or the International Organization for Standards (ISO) 17712-2010. Seals shall be 1/8th 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.

- a. 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.
- b. 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 section 16.f.1. of this Contract.

If the load is rejected by the recipient agency, the Contractor shall return the load to its plant and have the product re-inspected for condition of container, and condition of the product (for frozen products), and reseal the truck in the presence of the USDA, AMS agent. The new seal number must be recorded, and a new certificate for condition of container must be issued and presented to the recipient agency. The

Contractor is responsible for all costs (freight, re-inspection fees, etc.) associated with rejected loads.

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

If the commodity offer 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 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 AMS Contracting Office.

3. Early Delivery

The Contractor may deliver early if the recipient agency agrees to accept early delivery and upon AMS personnel being available to perform any necessary checkloading and final acceptance requirements, if applicable.

4. Compensation for Delays in Delivery

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 periods, for reasons other than causes beyond the control and without the fault and negligence of the Contractor, may be grounds for termination of that line item, termination of the entire contract, or assessment of liquidated damages.

If a Contractor determines that it will not be able to deliver the commodity by the Not-Later-Than (NLT) delivery date, the Contractor shall notify the contracting officer immediately. If the reason for not meeting the NLT delivery date is beyond the control or negligence of the Contractor, the Contractor is required to submit a waiver request within 2 working days after the scheduled NLT delivery date. Failure to submit a waiver request within the time specified will result in liquidated damages being assessed. Waiver requests submitted after the time specified will not be accepted. See Section C.6 for liquidated damages.

If a Contractor delivered a product and the product is rejected, the Contractor shall deliver an acceptable replacement product prior to the end of the NLT delivery date and liquidated damages will not be assessed. However, if the replacement product will be delivered beyond the NLT delivery date, liquidated damages will be 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.

5. Checkloading

- a. The Contractor shall not load the commodity for shipment unless, at the time of such loading, the commodity is checkloaded by USDA or by a person of the inspection or grading service designated by USDA. The Contractor is responsible for giving notice in sufficient time for a USDA agent to be present. The cost of checkloading shall be for the account of the 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 the Contractor of the obligation to affect 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. The Contractor shall be liable for all shortages which occur before delivery, except that if shipment is by common carrier, the 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 the 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 the Contractor's account. The 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 the 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, the Contractor shall have the responsibility for removing the seals.

6. Obliteration of Markings

The appearance in commercial or other channels of 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. The contractor agrees to take necessary action to prevent 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 specific to the contract (i.e. the “contract compliance stamp”) including those held by the 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 specific to 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; or (b) any other actions, approved by the Contracting Officer, which accomplish the intent of the foregoing.

f. Liability for Losses Due to Deterioration, Spoilage, or Recall

1. Loss Due to Deterioration or Spoilage

The Contractor shall reimburse USDA for all losses due to deterioration or spoilage sustained by USDA for which the Contractor is responsible, but only if such losses are discovered within a reasonable time, as determined by USDA, after delivery. The 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 the 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 the Contractor. In lieu of reimbursing USDA, the Contractor may replace the deteriorated or spoiled commodity with an equal quantity of commodity which conforms to all contract requirements and Item Description and Requirement (IDR), if such replacement is agreed to by USDA.

2. 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://www.fns.usda.gov/fdd/foodsafety/hold-recallpros.pdf>. These costs include, at a minimum, storage, transportation, processing, and distribution of the commodities or products.

g. Invoices and Payment Process

1. Submission of Invoice in WBSCM.

Invoices requesting payment must be submitted by the Contractor electronically through WBSCM. Invoices for payment must include an electronic copy of the following documents:

- a. An official inspection and checkloading certificate(s), if applicable;
- b. The certificate of conformance, if applicable;
- c. The signed bill of lading or other commercial receipt signed by recipient agency evidencing delivery date and quantity of product delivered, or report evidencing delivery of product;
- d. Other required documents identified in the Item Description and Requirement (IDR);
- e. Authorization letter from the Contracting Officer for reimbursement of extra cost, if applicable; and
- f. Any waivers granted by the Contracting Officer, if applicable.

Invoice must include the quantity of what is awarded on the Purchase Order unless a waiver has been granted by the Contracting Officer. Invoices must be submitted on a full truckload quantity, or multiples thereof; invoices for less than full truckload quantities may not be accepted. Invoice quantity must match the quantity awarded on the Purchase Order unless a waiver has been granted by the Contracting Officer.

Submission of an invoice when all contract terms and conditions have not been satisfied may subject the 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 delivery invoiced.

In order for the contractor to receive payment on an invoice the following three action items must be completed:

- 1) ASN must be created in WBSCM;
- 2) Goods Receipt entered by the recipient agency representative; and
- 3) Invoice submitted in WBSCM with all supporting documents attached.

Payment is due after submission of a properly prepared invoice in WBSCM, with the required supporting documentation, within the time indicated below

If the items delivered are:	Payment must be made as close as possible to but not later than:
Processed frozen fruit and vegetable products. As defined in 31 U.S.C. 3902	10th day after product delivery
Processed canned fruit and vegetable products. As defined in 31 U.S.C. 3902	30th day after product delivery

For the purpose of payment, the date of delivery of each shipment of product will be the date of receipt in WBSCM of a properly documented invoice package and the Goods Receipt entered by recipient agency. In addition to the submission of the invoice package with supporting documents indicated above, the following action must be completed in WBSCM before payment will be made.

Three way match – Delivery Order Item, Goods Receipt, and Invoice with supporting documentation attached.

USDA payments must be made directly to a financial banking institution as listed in the

Contractor's CCR.

D) CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS:

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EXHIBIT 1 –FRUIT SPECIFICATIONS

The following USDA Commodity Specifications are applicable to identified materials for this contract.

Commodity Specification for Canned Fruit, dated September 2014, as amended:

<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5109098>

CANNED	
WBSCM Material	Material Description
100209	APRICOTS HALVES EX LT CAN-6/10
100210	APRICOT HALVES CAN- 24/300
100211	MIXED FRUIT CAN- 24/300
100212	MIXED FRUIT EX LT CAN-6/10
100216	APRICOTS DICED PEELED EX LT CAN-6/10
100218	PEACHES CLING SLICES CAN- 24/300
100219	PEACHES CLING SLICES EX LT CAN-6/10
100220	PEACHES CLING DICED EX LT CAN-6/10
100223	PEARS CAN- 24/300
100224	PEARS SLICES EX LT CAN-6/10
100225	PEARS DICED EX LT CAN-6/10
110233	MIXED FRUIT EX LT SUCROSE CAN-6/10
110234	PEACHES CLING DICED EXLT SUCROSE CAN-6/10
110236	PEACHES CLING SLC EXLT SUCROSE CAN-6/10
110239	PEARS SLICES EX LT SUCROSE CAN-6/10

Commodity Specification for Frozen Fruit, dated Oct 2014, as amended:

<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5109139>

FROZEN	
WBSCM Material	Material Description
100239	PEACHES FREESTONE SLICES FRZ CTN-20 LB
100241	PEACH FREESTONE DICED FRZ CUP-96/4.4 OZ
100253	STRAWBERRY FRZ CTN-30 LB
100254	STRAWBERRY SLICES FRZ CTN-30 LB
100256	STRAWBERRY FRZ CUP-96/4.5 OZ
100261	APRICOT FRZ CUP-96/4.5 OZ

EXHIBIT 2 – ESTIMATES BASED ON CURRENT ORDERS FOR CANNED AND FROZEN FRUIT

See attached spreadsheet titled Exhibit 2 – ESTIMATES BASED ON CURRENT ORDERS FOR CANNED AND FROZEN FRUIT

There are 3 tabs on this spreadsheet for Household Programs and the National School Lunch Program (NSLP).

- Tab 1 Titled – Household Programs Demand: shows orders currently in the system for January 2016 through September 2016 deliveries.
- Tab 2 Titled – NSLP Demand Jan-June: shows orders currently in the system for January 2016 through June 2016 deliveries.
- Tab 3 Titled – NSLP Demand July-Sept: shows estimated quantities for each delivery period July 2016 through September 2016 and are based on a survey, not real orders.

Note: These orders are subject to change and are provided solely for informational purposes.

EXHIBIT 3 - DOMESTIC ORIGIN CERTIFICATION

This form must be completed by an authorized company official or their designee for each contract/purchase order delivery awarded. The completed form must be presented to a representative of the USDA, Agricultural Marketing Service (AMS), certification agent 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 applicable certification branch. Each contractor and/or processing facility under this contract must have a copy of this form on file.

Solicitation Number: _____

Contract/Purchase Order 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, attach a copy of your segregation plan explaining how such product is stored and processed separate from domestic product..

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, 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 1, Chapter 47, Section 1001 states that “Except as otherwise provided in this section, whoever, in any manner 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 devise 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 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 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 authorized signatures)

Title: _____

Company: _____

Date: _____

EXHIBIT 4 - WBSCM MINIMUM SYSTEM REQUIREMENTS

	Minimum Requirement	Notes:
Hardware		
Processor	800MHz +	
Memory	512 MG +	
Hard Disk Drive	110 MB +	
Monitor Resolution	1024 x 768 16K colors or better	
Software		
Operating System	Microsoft Windows XP, Microsoft Windows 2000, Microsoft 7, or Microsoft Windows Vista	
Web Browser	Microsoft Internet Explorer 8.0, 9.0, 10 in compatibility mode	*WBSCM is not compatible with IE11
Adobe Flasher Player	Adobe Flash Player 8.0 or higher	
Additional Desktop Integration Software	Microsoft Office (MS-Word, MS-Excel); Adobe Acrobat Reader	
Additional Software for Procurement	Java Runtime Environment 1.4.2 or higher	

WBSCM Service Desk: IE8, 9, and 10 Browser Settings –

WBSCM officially supports Internet Explorer (IE) as the browser client, specifically versions IE8, 9, and 10 (running in “compatibility mode”). WBSCM does not officially support Internet Explorer version 11. Even though IE11 can be run in ‘compatibility mode’, are users have reported issues and inconsistent results while using IE11 with WBSCM. Users of IE11 should consider downgrading to IE10 should they encounter issues when using WBSCM. The procedure to downgrade from IE11 to IE10 is fairly straight forward and the process steps to downgrade from IE11 to IE10 are provided at the end of this document (See “[Downgrading from Internet Explorer version 11 to Internet Explorer version 10](#)”). Other browsers (e.g. Firefox, Google Chrome, Safari, Google/MSN/Bing Bot, etc.) are not officially supported as they may work for some WBSCM functions, but may not work for all WBSCM functions.

Not sure what browser version you are using?

To perform a browser version check see the information at the very end of this document under “[Perform Browser Check](#)”.

When a user reports an error that occurred while using a browser other than Internet Explorer, the WBSCM Service Desk may first request that the user try to recreate the error using Internet Explorer version 8, 9 or version 10 (running in “compatibility mode”). If the function in error was previously executed successfully using the same browser, please provide this information to the WBSCM Service Desk technician when you open an incident.

New WBSCM users that need to create an account in eAuth should use Internet Explorer version 8, 9, or 10. Once a user registers with eAuth and WBSCM, he or she will need to follow the IE8, 9, or 10 configuration steps detailed below to avoid runtime issues with their WBSCM functions.

WBSCM users who upgrade their Internet Explorer browser to version 8, 9, or 10 need to confirm that the following items have been properly configured after the upgrade.

1. [Internet Explorer Version 8, 9, 10 Compatibility View Setting](#)
In order to assure that all functions will work properly when using Internet Explorer version 8, 9, or 10 users must use the “Compatibility View” option available in Internet Explorer.
2. [Internet Explorer Version 8, 9, or 10 Compatibility View Window Setting](#)
WBSCM uses functions such as browser side scripting and Active X controls in order to generate a more robust user display and also leverage the processing capacity available at the desktop. By including “usda.gov” entry in the Compatibility View window and the Trusted Sites window, users can satisfy the browser security setting requirements of WBSCM.
3. [Internet Explorer Version 8, 9, 10 Zoom Level Setting](#)
In certain situations, the IE browser session may “freeze” while using WBSCM. Often, this is due to a display incompatibility between the browser Zoom setting and the WBSCM web page. Users can avoid these situations by maintaining their IE browser Zoom setting at 100%.

The following sections provide steps users should take to configure their IE8, 9, and 10 browser in order to access and use WBSCM. **Please note that the screen prints shown are from IE 8. Higher versions may look slightly different.** You can view help on the following topics:

[Adding USDA.gov to Compatibility View Websites List](#)

[Adding WBSCM to the Trusted Sites List](#)

[Set IE8 Zoom Settings for WBSCM](#)

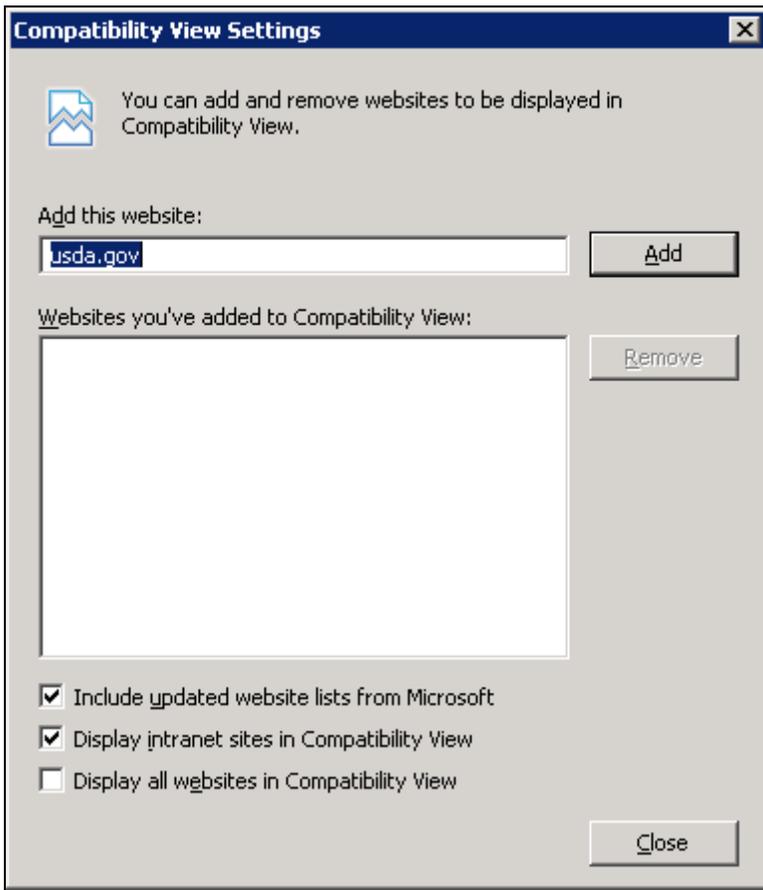
[Downgrading from IE11 to IE10](#)

[Performing Browser Check](#)

Add USDA.gov to Compatibility View Websites List:

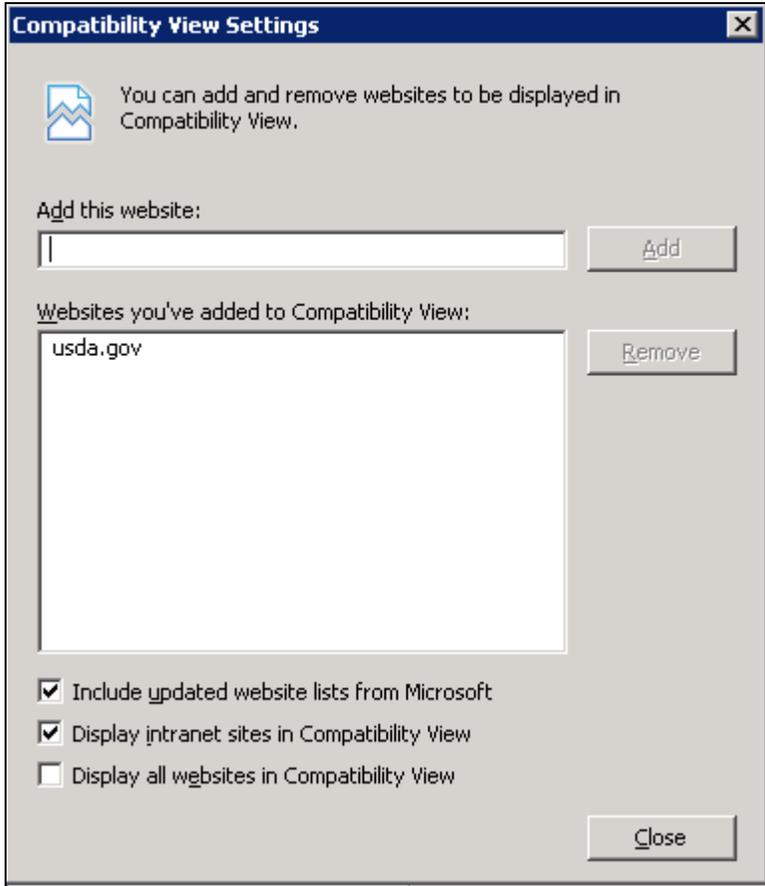
1. Open Internet Explorer
2. Select **Compatibility View Settings** from the **Tools** menu

You will then see the pop-up box below:



3. In the *Add This Website* text box type “**usda.gov**” and click the **Add** button.

4. Click the **Close** button.



All USDA.gov web pages will now appear in IE compatibility mode.

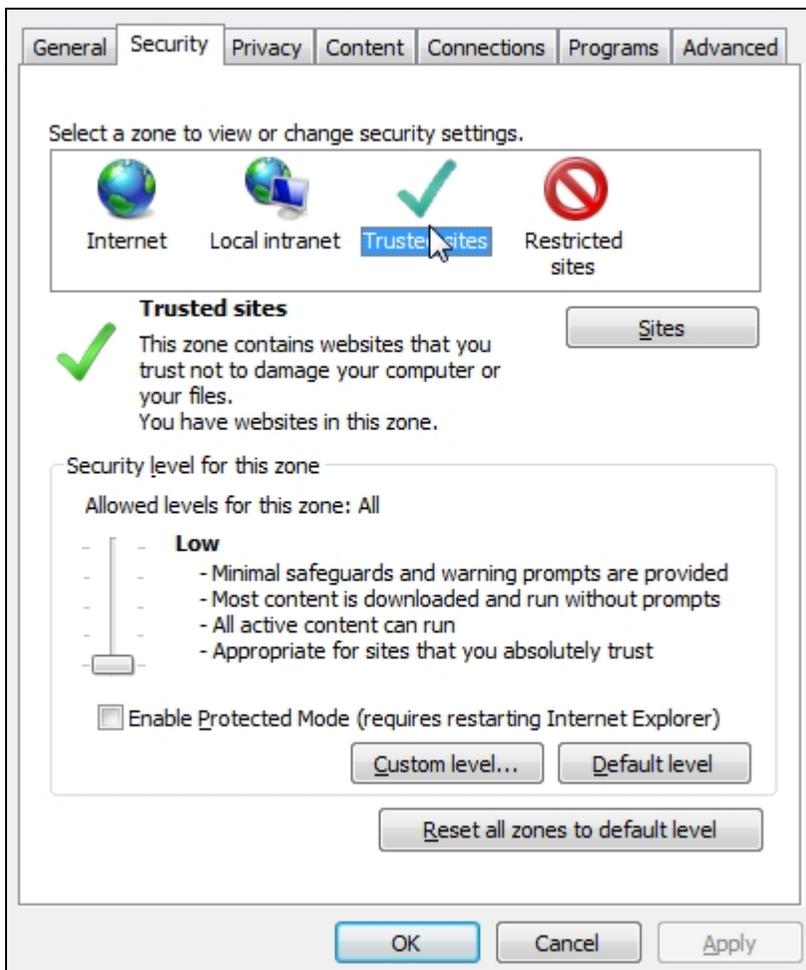


Add WBSM to the Trusted Sites List:

1. Open Internet Explorer.
2. Select **Internet Options** from the *Tools* menu.

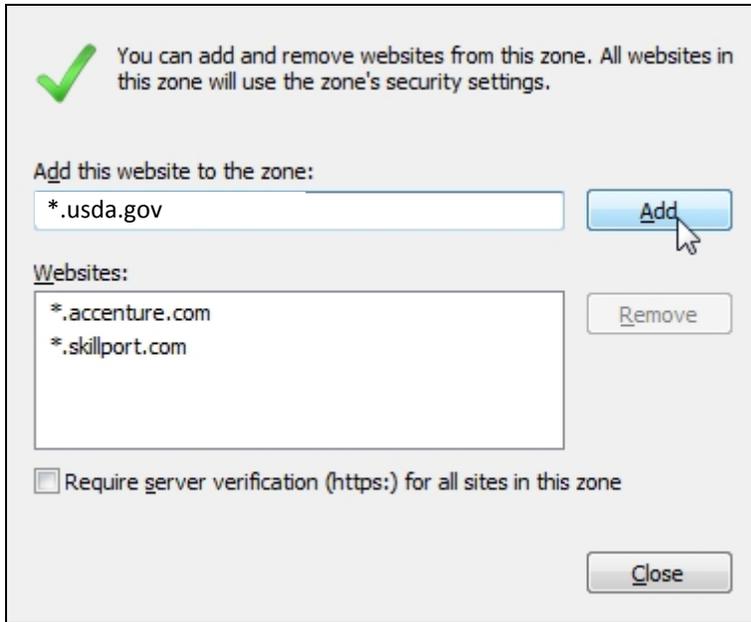


3. In *Internet Options* dialog box, select the **Security** tab.



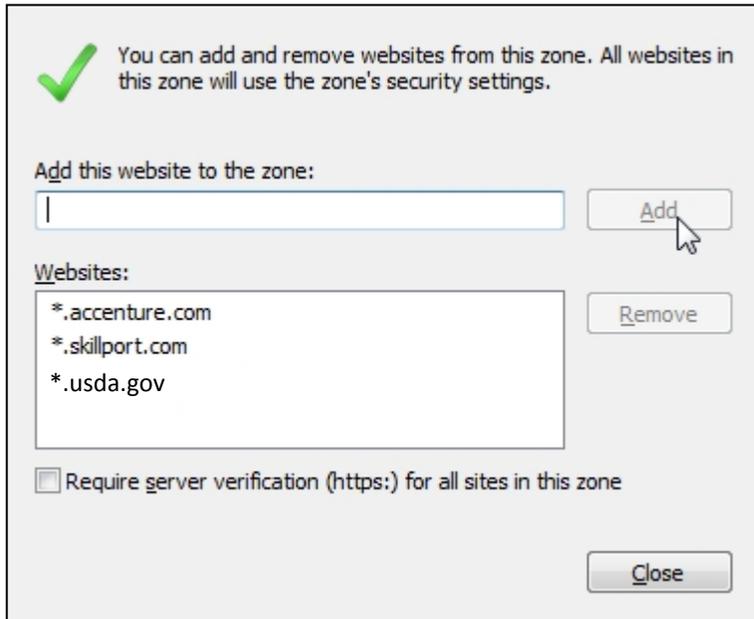
4. Select **Trusted Sites** from the *Zone* choices.

5. Click the **Sites** button.



A screenshot of a Windows dialog box titled "Trusted Sites" (implied). At the top left, there is a green checkmark icon followed by the text: "You can add and remove websites from this zone. All websites in this zone will use the zone's security settings." Below this, there is a section labeled "Add this website to the zone:" with a text input field containing "*.usda.gov" and a blue "Add" button to its right. A mouse cursor is pointing at the "Add" button. Below the input field is a section labeled "Websites:" with a list box containing two entries: "*.accenture.com" and "*.skillport.com". To the right of the list box is a "Remove" button. At the bottom left, there is a checkbox labeled "Require server verification (https:) for all sites in this zone" which is currently unchecked. At the bottom right, there is a "Close" button.

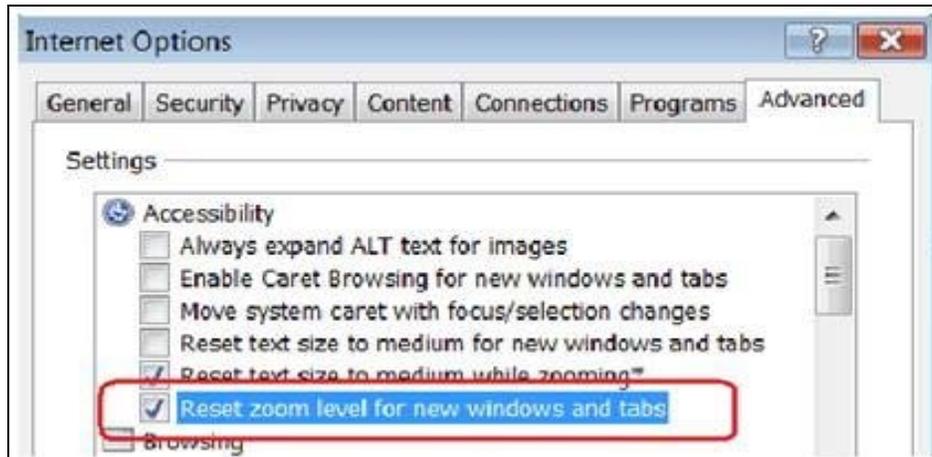
6. Add “*.usda.gov” to the *Trusted Sites* zone by clicking the **Add** button. Then confirm that “*.usda.gov” has been added to the *Websites* list of *Trusted Sites*



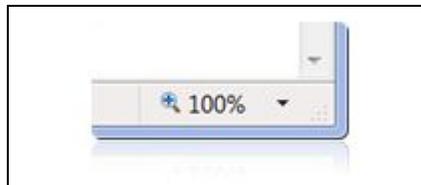
A screenshot of the same "Trusted Sites" dialog box. The "Add" button is now disabled (greyed out) and the mouse cursor is no longer over it. The text input field is empty. The "Websites:" list box now contains three entries: "*.accenture.com", "*.skillport.com", and "*.usda.gov". The "Remove" button and the "Require server verification" checkbox remain the same as in the previous screenshot. The "Close" button is still present at the bottom right.

Set IE8, 9, 10 Zoom Setting for WBSCM:

For WBSCM, users should check their **Internet Options Advanced** tab and deselect “Reset zoom level for new windows and tabs”.



Users should then manually set the Zoom Level to 100% using the ‘Zoom level option’ at the bottom right of their browser screen.



Downgrading from Internet Explorer 11 to Internet Explorer 10:

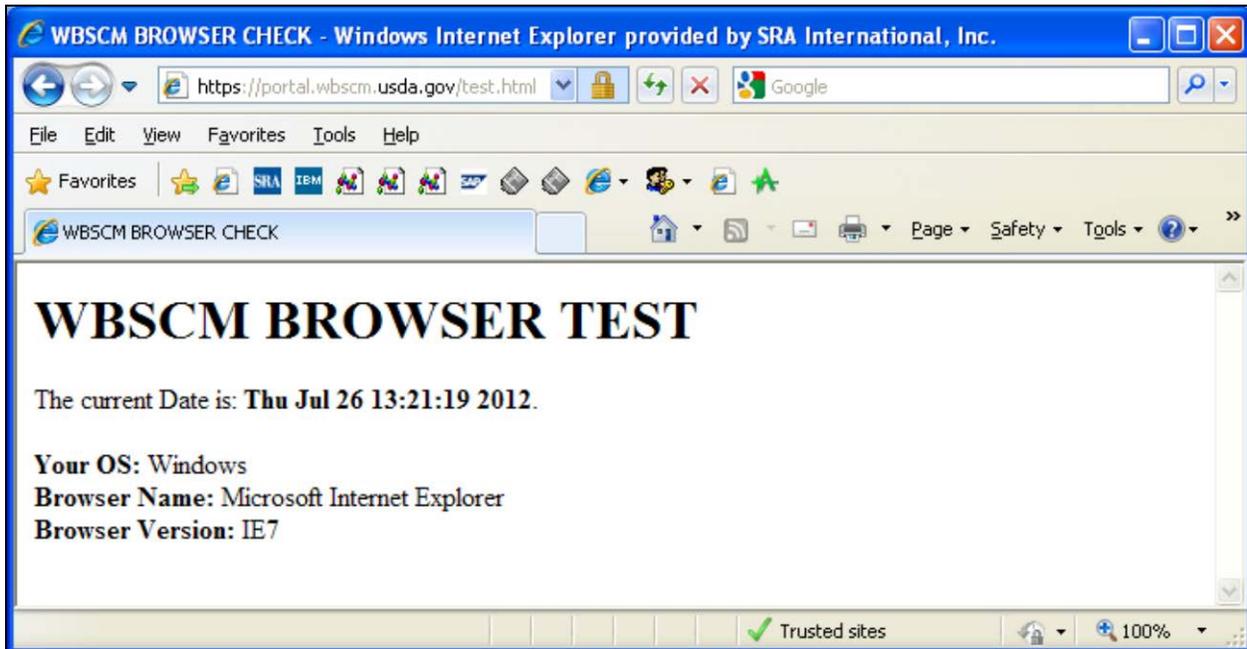
1. Close all active programs.
2. Click the **Start** button.
3. Click the **Control Panel** icon.
4. Click on **Programs and Features**.
5. Click **View Installed Updates** in the task pane.
6. Now select **Windows Internet Explorer 11** shown under Microsoft Windows updates.
7. Click the **Uninstall** button.
8. Follow the instructions on the screen. The IE11 uninstall process lasts for about 3-5 minutes and you will be able to access Internet Explorer 10 as usual after restarting your computer.

Perform Browser Check:

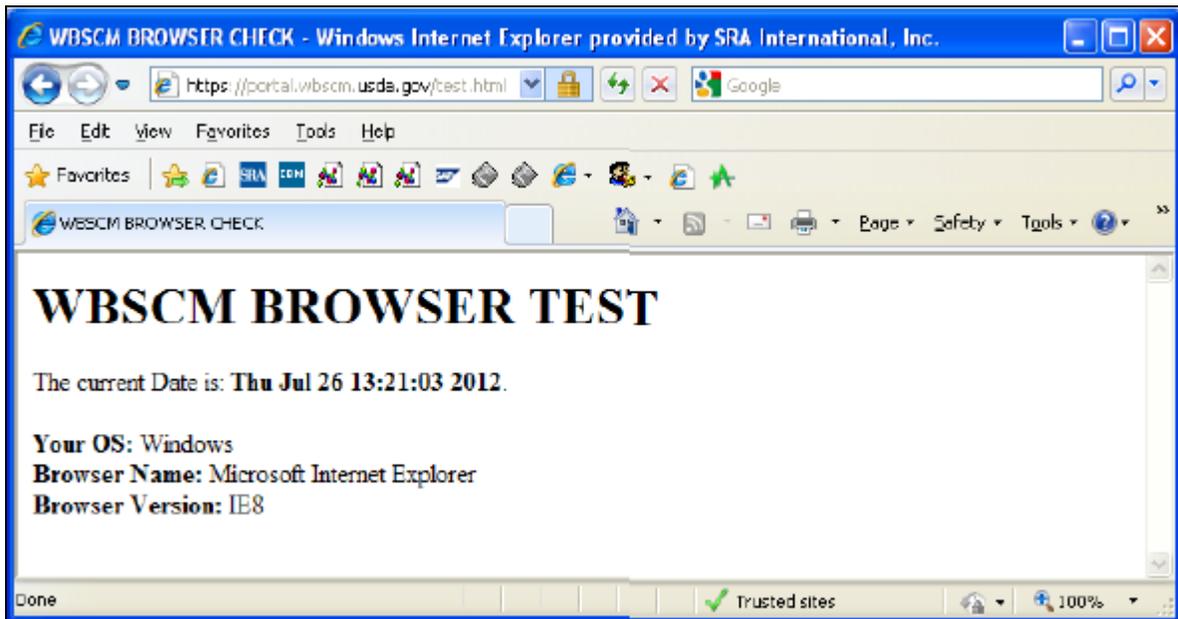
To perform a browser check type the following URL in the Navigation toolbar:

https://portal.wbscm.usda.gov/test.html

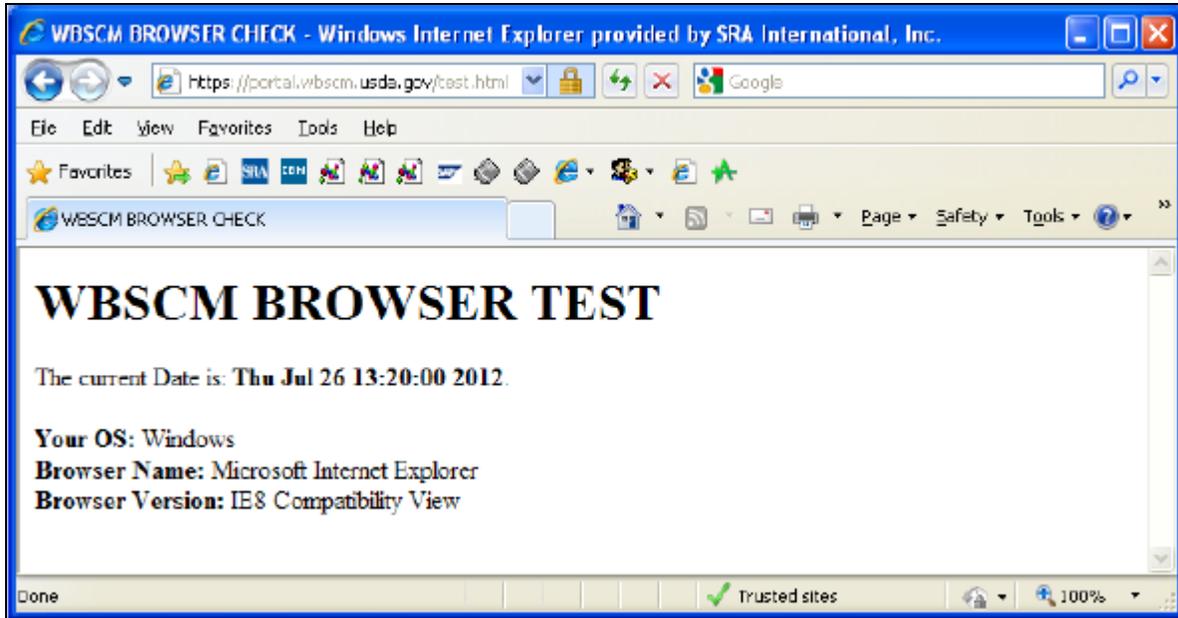
This is what an IE7 user will see:



This is what an IE8 user will see:



This is what an IE8 (“Compatibility mode”) user will see:



This is what a Firefox user will see:



EXHIBIT 5 - PAST PERFORMANCE REFERENCE INFORMATION

INSTRUCTIONS: Offerors must submit recent and relevant information concerning contracts and subcontracts (Federal, State, local government or private) which demonstrates their ability to perform the proposed effort. (One contract reference per form. Form may be duplicated):

Contract Number: _____

Contractor (Name, Address, Zip Code, Telephone number and Email Address):

Type of Contract: _____

Contract Dollar Value: _____

Date of Award: _____ Date Completed: _____

If not completed, provide status:

Type/Extent of Subcontracting:

Product/Service Description, Location & Relevancy of Work:

Percentage of Work Completed by your company: _____

Name, Address, Telephone Number and Email Address of Contact Person and their position:

Name of Offerors Bank: _____
Address: _____
Point of Contact: _____
Telephone Number: _____

**EXHIBIT 6 - QUALIFICATION REQUIREMENTS FOR PROSPECTIVE CONTRACTORS
SELLING COMMODITIES TO USDA
September 2012**

I. Introduction

The United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) procures various products for school lunch and other domestic food nutrition programs.

The qualification requirements requested as part of the application package for a prospective contractor are a reexamination and revalidation of established qualification requirements as required by the Federal Acquisition Regulations (FAR) Part 9 and are necessary for AMS to carry out its procurement mission. A prospective contractor shall be determined to be qualified by the Contracting Officer prior to submitting offers under an AMS solicitation. An interested contractor must complete and submit all materials requested herein to the AMS Commodity Procurement Division.

The Contracting Officer will review the application package and determine if a prospective contractor can be added to the Qualified Bidders List. Access to the Web-Based Supply Chain Management (WBSCM) system for submission of offers (bids) shall be granted only to Qualified Bidders.

Procurement information, including the Master Solicitation for Commodity Procurements, current Solicitations, Supplements and USDA Commodity Specifications, information on WBSCM, and historical contract award information, is located at <http://www.ams.usda.gov/commoditypurchasing>.

A prospective contractor may submit its application package at any time and will be notified whether requirements have been satisfied and approval to bid is granted. A prospective contractor that is a small business concern may be referred to the Small Business Administration (SBA) for a Certificate of Competency, if deemed necessary by the Contracting Officer.

II. Administrative Requirements

- A. The Central Contractor Registration (CCR) website and the Online Representations and Certifications Application (ORCA) website were consolidated (along with six other databases) to form what is now called the System for Award Management (SAM). Each prospective contractor shall register in the SAM system at www.sam.gov. SAM requires a one-time business registration with mandatory annual updates. SAM allows a prospective contractor to control the accuracy of its own business information. There is no fee to register in SAM. The data submitted during the registration process will be used for procurement and payment purposes. It is the responsibility of the contractor to maintain accurate and current SAM registration information. An expired SAM registration will prohibit a contractor's ability to submit an offer or receive payment from the Web-Based Supply Chain Management (WBSCM) system. SAM registration is valid for one year from date of submission and must be updated annually. SAM will notify vendors 60, 30 and 15 days prior to expiration of the record.
- B. Each prospective contractor shall submit a [WBSCM Vendor Registration Form](#) (PDF), available at the website referenced above, as part of the application package. This form is used to grant a prospective contractor appropriate access to the Web-Based Supply Chain Management System (WBSCM), but **does not** permit the applicant to submit offers/bids on USDA solicitations. Access to submit bids in WBSCM is reserved for qualified vendors after the vendor is approved by the

Contracting Officer. Please send the form once it is completed to our Small Business Coordinator, Dianna Price at dianna.price@ams.usda.gov.

- C. A prospective contractor who is a certified small disadvantaged business (SDB), 8(a), and/or HUBZone, but is not certified in SAM as such, must submit a copy of the applicable SBA certificate.

III. Capability Requirements

In accordance with FAR 9.104-1 and 9.104-3(b), each prospective contractor shall certify its capability to perform, by including the following, in their application package:

- A. A written submission, on company letterhead, authenticating the exact legal name of the company and include the following:
 - 1. A description of historical business experience, to include the number of years, it has sold the same or similar products in the commercial marketplace or to a governmental organization.
 - 2. Additional pertinent information regarding a prospective contractor's capabilities, such as, but not limited to, a satisfactory record of integrity and business ethics, and verification that it is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- B. Three reference letters from customers demonstrating that the prospective contractor has satisfactorily sold similar products to them (the reference letters must be on their company letterhead with signatures).
- C. In accordance with 13 CFR 121.406, **a prospective contractor that is a non-manufacturer** must demonstrate that it is engaged in the wholesale or retail trade, and has sold the items being offered to the general public.
 - 1. The non-manufacturer must provide a copy of the written agreement in effect between itself and the subcontractor(s) (manufacturer) demonstrating ownership and/or possession of the product, to certify compliance with federal regulatory requirements and applicable AMS solicitation requirements. The agreement must be on company letterhead and must be signed by both parties.
 - 2. In addition, non-manufacturers must provide a complaint and dispute resolution proposal for rejected or defective products.

IV. Financial Responsibility

A financial responsibility determination will be made prior to award.

- A. **Prospective contractors must provide their most current Dun and Bradstreet (D&B) analysis report. In order to facilitate their responsibility determination, AMS will request and evaluate D&B's analysis reports for each prospective contractor. (It is highly recommended that each prospective or qualified contractor submit its audit or review level financial statement to D&B as this information impacts the D&B reports.)**

- Submit a copy of the **Credit Advisory Report** supplied by D&B. To obtain a copy, please contact the D&B Credibility Department at 866-584-0283 or go to the D&B web address at <https://eupdate.dnb.com/default.asp?cmid=IOG200047>.
- B. Prospective contractors who are starting a new business (with no or very little financial history) must provide its latest complete comparative financial statements listed below:
1. The financial statement must be prepared in accordance with generally accepted accounting principles and be audited or reviewed by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants.
 2. At a minimum, the statement should include a balance sheet, profit and loss statement, statement of cash flows, statement of retained earnings and any notes to the financial statement.
 3. For partnerships, the last fiscal year end or current financial statement of the partnership and the personal financial statement of each partner will be required.
 4. For individuals, financial statements must include all personal and business assets and liabilities.
- C. A prospective contractor shall demonstrate that it has adequate financial resources to perform the contract, or the ability to obtain them, as required by FAR part 9.104-3(a), including the availability of necessary working capital and satisfactory credit. This may include, but is not limited to, financial protection against losses as set forth in FAR part 28.
- D. Firms that are veteran-owned or service-disabled veteran-owned businesses (SDVOSB), and those certified under the U.S. Small Business Administration's 8(a) program, **MUST** provide copies of insurance or a line-of-credit equal to or above the project contract award total (FAR part 28).
- E. The D&B business analysis report will be reviewed on an annual basis to determine a qualified contractor's continued eligibility to receive an award. Every January 1st, each qualified contractor must submit its current audit or review level financial statements to D&B. In addition, a qualified contractor must notify its Contracting Officer when the financial information has been submitted to D&B. Failure to submit the required financial information to D&B and/or the Contracting Officer may result in the Contracting Officer making a non-responsibility determination.

V. Food Defense Requirements

All qualified contractors and subcontractors 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 products. The plan shall address the following areas, where applicable:

(1) food defense plan management; (2) outside and inside security of the production and storage facilities; (3) slaughter and processing, including all raw material sources; (4) controlled access to production and storage areas; (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).

- A. The food defense plans are audited by AMS. Any nonconformance identified must be addressed in writing to both the Contracting Officer and Auditor within 14 calendar days of the audit. Contact the appropriate AMS Audit and Accreditation Programs for information on food defense audit services. Contacts for each commodity area are found on the AMS website at www.ams.usda.gov/isaap under “Contact Us.”
- B. For fruits, vegetables, shell eggs, and other food products regulated by the Food and Drug Administration (FDA), reference FDA’s “Food Producers, Processors, and Transporters: Food Security Preventive Measures Guidance” dated October, 2007 at the following website: <http://www.fda.gov/Food/FoodDefense/FoodSecurity/default.htm>.

VI. Pre-Award Plant Surveys

- A. After receiving the qualification information, a pre-award plant survey or capability assessment will be conducted to verify that a prospective contractor meets AMS qualification requirements. The pre-award survey/assessment will be conducted by the applicable AMS Program—Fruit and Vegetables—to evaluate technical, production, and transportation capabilities, and quality assurance and production control procedures of the vendor.
- B. Specific pre-award plant survey/assessment requirements are referenced in the Supplement and/or Commodity Specification(s) applicable to the commodities the prospective vendor is interested in supplying. These documents can be found on the Commodity Purchasing website at www.ams.usda.gov/commoditypurchasing. For more information, contact the Commodity Procurement Division at 202-720-7693.

VII. Contractor Approval

Upon successful submission and review of the application package materials, the contractor is added to the Qualified Bidders List, given a WBSCM Corporate Vendor Administrator role and a Vendor Offeror role, and is ready to submit bids on AMS solicitations.

A prospective contractor is encouraged to submit the application package as soon as possible to allow ample time for the processes of approval and subsequent WBSCM registration prior to the closing date for the targeted solicitation. A checklist (**Exhibit I**) is provided to assist the applicant with submission of a complete package.

Prospective contractors must provide all of the documents outlined in the [Vendor Qualifications Requirements \(PDF\)](#) document to our office (see address below) or via email to Dianna.Price@ams.usda.gov. Questions regarding this process may be directed to Ms. Price via email. Mark all packages sent to our office as **CONFIDENTIAL**. (Mail sent using the US Postal Service will take 1 to 2 weeks longer than using a private mail firm.)

Commodity Procurement Division
Attn: Dianna Price
Agricultural Marketing Service, USDA
1400 Independence Ave, SW, Room 3522-S
Washington, DC 20250

Except as provided in FAR Part 24.2 (the “Freedom of Information Act”) qualification information, including the pre-award survey reports, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the government. All information provided will be kept confidential to the extent permitted by law.

Under penalty of perjury, each qualification package must be submitted and signed by an individual who has the legal authority to contractually bind a prospective contractor on whose behalf that information package is submitted. If any information provided by a prospective contractor becomes inaccurate, a prospective contractor must immediately notify the contracting officer and provide updated and accurate information in writing. AMS reserves the right to waive minor irregularities and omissions in the information obtained in the qualification package submitted.

Exhibit I

Use the following checklist to assist in completion of the application package. Questions regarding vendor qualifications and approval should be directed to Dianna Price at 202-720-4237.

System For Award Management (SAM). www.sam.gov . Registration completed (including Representations and Certifications)	
Business Status is up to date and as indicated in SAM:	
Large business	
Small business	
Small disadvantaged business	
Women-owned business	
Veteran-owned business	
Service-disabled veteran-owned business	
HUBZone business	
8(a)	
Send the following documents to the USDA:	
SBA certification (if applicable)	
<u>WBSCM Vendor Registration Form</u>	
Company Letter certifying capability to perform. The following requirements also apply:	
Description of historical business experience	
Mention satisfactory record of integrity, business ethics, etc.	
Three (3) Letters of References your company sold similar products to	
Non-manufacturer. The following requirements also apply:	
Letter from manufacturer/supplier stating it is willing to provide product that meets the commodity specifications	
Complaint and dispute resolution proposal	
Most current Dun and Bradstreet Report (Credit Advisory Report)	
Most current audited financial statements	

E) SOLICITATION PROVISIONS

1) FAR 52.212-1, Instructions to Offerors – Commercial Items (APR 2014)

The offeror shall submit proposals in four parts: Part 1 - Technical Information, Part 2 - Management and Workforce Practices and Policies, Part 3 – Past Performance, and Part 4 - Price. The format for each proposal part is described below. Offerors shall submit all four parts to be eligible for award. Each part should be separate and complete within itself.

Note: Parts 1, 2, 3, and 4, must be submitted via WBSCM either as an attachment or as part of the WBSCM offer form.

Proposal Part 1: - Technical Information

If the offeror intends to use one or more plants or facilities located at a different address from the address indicated in their WBSCM offer, the offeror shall list all the processing plants and shipping points that it intends to use and upload them in a PDF formatted document or an excel spreadsheet, as an attachment in WBSCM. If the offeror does not submit any additional plants, all products ordered must come from the primary plant identified by the offeror in their WBSCM offer. Food Defense Audit and Plant PSA Survey must be completed prior to proposal due date.

Technical compliance will be determined by AMS through verification that: 1) the offeror has complied with the qualification requirements (See Exhibit 6 – Vendor Qualification Requirements September 2012); 2) the contractor has completed all WBSCM (Web Based Supply Chain Management) requirements and is a current user of WBSCM (inquiries concerning WBSCM access can be addressed by sending an email to wbscmamshelpdesk@ams.usda.gov); and 3) at least one processing plant and shipping point to be used are in compliance with USDA audit requirements prior to proposal due date. Offerors will have the opportunity to add additional compliant plants and shipping points during performance.

Proposal Part 2 – Management and Workforce Practices and Policies

Offerors should describe management strategies and control procedures to be used in achieving performance under the contract, such as the management of any subcontractors, strategies to manage risk, and management support and participation in implementation of procedures; specific technical skills to be employed on a full-time, part-time, interim, or temporary basis; plans for initial and on-going training of contractor and subcontractor personnel to ensure tendering of supplies that meet contract requirements; plans for on-going coordination of security clearances, whenever applicable; and the efficacy of policies and procedures in place for the recruitment, development, and retention of a safe, qualified, and diverse workforce.

Proposal Part 3 – Past Performance

For offerors with prior history of doing business with AMS, past performance will be determined based on the offeror's performance under previous AMS contracts. For offerors with no prior history of doing business with AMS, the references submitted for vendor qualification or other references AMS is aware of may be contacted concerning the offeror's performance under previous contracts.

Proposal Part 4 – Price

Offerors shall propose pricing information as specified in Section B.1.

Constraints: Offerors should also indicate the maximum amount of product they are capable of producing during the identified delivery periods (see B.4).

QUESTIONS regarding this RFP are due on or before 01:00 pm Central Time, on Tuesday, June 2, 2015, via email, to Christina.Sample@ams.usda.gov with “Questions concerning Solicitation 2000003370, Canned & Frozen Fruit IDIQ” in the subject line. AMS will accept and make every attempt to answer questions that are submitted after this date and prior to the due date of the solicitation. However, AMS cannot guarantee that we will be able to answer untimely questions. Answers to questions will be issued in writing via an amendment to the solicitation.

A **CONFERENCE CALL** discussing this RFP will be held, **Thursday, June 04, 2015, at 11:00 a.m. Eastern Standard Time** (10:00 am Central Time). Call in number is (888)844-9904; Access code # 1693356#.

OFFER DUE DATE: PROPOSALS are due no later than 01:00 pm Central Time, June 15, 2015.

SUBMISSION OF OFFERS:

A Proposal Submission Checklist has been included on page 4 of this document to assist Offerors in ensuring all submission requirements are met.

Offers must submit the following by the Offer Due Date and Time:

- A complete and signed copy of Form SF1449 (See Section A) uploaded in portable document file format (PDF) in WBSCM;
- Acknowledgement of all amendments issued as specified in Block 11 of the amendment form (SF-30), uploaded in PDF format into WBSCM;
- Proposal Part 1 – Technical Information, uploaded in PDF format into WBSCM;
- Proposal Part 2 – Management and Workforce Practices and Policies, uploaded in PDF format into WBSCM;
- Proposal Part 3 – Past Performance Information, uploaded in PDF format into WBSCM;
- Proposal Part 4 - Prices and a Constraint Document uploaded in PDF format into WBSCM.

The required subcontracting plan shall be submitted by large firms within 30 days of contract award.

Contract Award

Award(s) documents will be available on the Vendors Supplier Self-Service Page in WBSCM by the date specified in the Solicitation. A notice of award will be issued in the form of a Product Commodity Award (PCA) Report or other public notice.

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> under the “Commodity Purchasing” link after award and the PCA report posted on the WBSCM Public Procurement Page.

2) FAR 52.212-2, Evaluation – Commercial Items (OCT 2014):

- (a) The Government will award a contract resulting from this solicitation to the responsible offerors whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

Proposal Part 1: Technical Information

Technical Acceptability will be determined by AMS through verification that: 1) the offeror has complied with the qualification requirements (See Exhibit 6 – Vendor Qualification Requirements September 2012); 2) that the contractor has completed all WBSCM (Web Based Supply Chain Management) requirements and is a current user of WBSCM (inquiries concerning WBSCM access can be addressed by sending an email to wbscmamshelpdesk@ams.usda.gov), and 3) at least one processing plant and shipping point to be used are in compliance with USDA audit requirements.

Proposal Part 2: Management Workforce Practices and Policies

Management Workforce Practices and Policies Approach – Offeror’s ability to develop and maintain a safe, effective, and diverse workforce, including recruitment, retention and development of such a workforce recruitment.

Proposal Part 3: Past Performance

Factor 1: Quality of Product

Factor 2: Timeliness of Performance: Late fruit deliveries must be less than 40% of total fruit deliveries from June 1, 2014, to May 31, 2015.

Factor 3: Business Relations/Problem Resolution:

a) Communication with Commodity Procurement Staff

b) No Terminations for Cause or Default in the past 2 years

Factor 4: Timely submission of Subcontracting Plans (large businesses only)

Proposal Part 4: Price

For each material, all offers will be ranked per State. AMS will use the lowest prices offered per state to determine the quantity each Offeror will be awarded. The quantity of each material awarded to offerors will be based on the historical demand (NSLP), and actual orders (Household) (See Exhibit 2) and the offerors’ constraints.

Offers with pricing based on delivery from different plants will be evaluated as separate proposals.

The evaluation factors are listed in descending order of importance as follows:

- 1) Technical Information
- 2) Past Performance
- 3) Management Workforce Practices and Policies
- 4) Price

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer’s specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

Basis for Award: The Government may make award without discussions; therefore, the offeror’s initial offer should contain their best pricing. Award will be based on best value using the trade-off process considering the evaluation factors listed above. Best value may be determined using tradeoffs among the evaluation factors, so the award may be made to other than the lowest-priced or highest technically rated proposal. Please note that all offers which fail to furnish required proposal information or reject the terms and conditions of the solicitation may be excluded from consideration for award.

Adjectival Ratings

The following adjectival ratings will be used to evaluate the offeror’s Technical Compliance.

TECHNICAL	
Acceptable	The offeror has 1) complied with all the qualification requirements, 2) the contractor has completed all WBSCM (Web Based Supply Chain Management) requirements and is a current user of WBSCM and 3) the contractor has an

	approved plant/shipping point.
Not Acceptable	The offeror has not complied with all the qualification requirements, and/or the contractor has not completed all WBSCM (Web Based Supply Chain Management) requirements nor is a current user of WBSCM.

The following adjectival ratings will be used to evaluate the offeror’s Management and Workforce Practices and Policies.

MANAGEMENT AND WORKFORCE PRACTICES AND POLICIES EVALUATION RATINGS		
Factor 1	Acceptable	The offeror’s management approach addressed the details listed.
	Not Acceptable	The offeror’s management approach did not address the details listed.

The following adjectival ratings will be used to evaluate the offerors Past Performance

PERFORMANCE RISK (FOR PAST PERFORMANCE EVALUATION FACTOR)	
Low Risk	Little doubt exists that the offeror will successfully perform the required effort based on the offeror’s past performance record.
Moderate Risk	Some doubt exists that the offeror can successfully perform the required effort based on the offeror’s past performance record.
High Risk	Significant doubt exists that the offeror will successfully perform the required effort based on the offeror’s past performance record.
Unknown Risk	Offeror is without a record of relevant past performance or past performance information is not available. The rating shall be characterized as neutral.

3) System for Award Management (SAM)

Prospective Contractors shall be registered in the SAM database prior to award of a contract as prescribed in FAR Parts 4.1102 and 4.1103. The SAM database can be accessed at <https://www.sam.gov>.

4) 52.215-6 Place of Performance (OCT 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, does not intend to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal.

(b) If offeror or respondent intends to use one or more plants or facilities located at a different address from the address indicated in this proposal, the offeror shall list all the processing plants and shipping points that it intends to use in this proposal. The processing plants and shipping points to be used shall be in compliance with the food defense audit required under Section C – Food Defense Requirements of this solicitation.

5) FAR 52.216-1, Type of Contract (APR 1984)

The Government contemplates award of an Indefinite Delivery/Indefinite Quantity, Firm-Fixed-Price with Economic Price Adjustment contract resulting from this solicitation.

6) FAR 52.212-3, Offeror Representations and Certifications – Commercial Items (MAR 2015):

An offeror shall complete the following paragraphs of this provision if the offeror has completed the annual representations and certificates electronically via <http://www.acquisition.gov>. If an offeror has not completed the annual representations and certifications electronically at the System for Award Management (SAM) website, the offeror shall complete paragraphs (c) through (o) of this provision. Offeror's can access this provision at <http://www.acquisition.gov>.

(1) *Annual Representations and Certifications.* Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the SAMwebsite.

(2) The offeror has completed the annual representations and certifications electronically via the SAM website accessed through <https://www.acquisition.gov>. After reviewing the SAM database information, the offeror verifies by submission of this offer that the representation and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs _____. *[Offeror to identify the applicable paragraphs at (c) through (o) of this provision that the offeror has completed for the purposes of this solicitation only, if any. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer. Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]*

7) AGAR 452.209-70, Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction (Deviation 2012-01) (Feb 2012):

(a) Awards made under this solicitation are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (P.L. No. 112-55), Division A, Sections 738 and 739 regarding corporate felony convictions and corporate federal tax

delinquencies. To comply with these provisions, all offerors must complete paragraph (1) of this representation, and all corporate offerors also must complete paragraphs (2) and (3) of this representation.

(b) The Offeror represents that –

(1) The Offeror is [], is not [] (*check one*) an entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands. (Note that this includes both for-profit and non-profit organizations.)

If the Offeror checked “is” above, the Offeror must complete paragraphs (2) and (3) of the representation. If Offeror checked “is not” above, Offeror may leave the remainder of the representation blank.

(2) (i) The Offeror has [], has not [] (*check one*) been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of offer.

(ii) The Offeror has [], has not [] (*check one*) had any officer or agent of Offeror convicted of a felony criminal violation for actions taken on behalf of Offeror under Federal or State law in the 24 months preceding the date of offer.

(3) The Offeror does [], does not [] (*check one*) have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(End of provision)