

**DOMESTIC COMMODITY INVITATION – PROCESS CHEESE
DESCRIPTION – 12-3J14-17-S-435
BID INVITATION NUMBER – 2000004962**

TENDERING TEXT

*****IMPORTANT SOLICITATION DETAILS*****

- **NEW – This solicitation is subject to the attached AMS Master Solicitation for Commodity Procurement (MSCP) dated April 12, 2017.**
- **NEW - Additional provisions and clauses for IDIQ Cheese Contracts are found in Part II of this tendering text document.**
- **NEW - This solicitation is subject to the attached Commodity Requirements Document Pasteurized Process American Cheese (DPPC3) dated September 25, 2013.**
- **NEW – Per MSCP clause 4A52.211-2, Delivery appointments change from no less than 24 hours prior to delivery to no less than 72 hours prior to delivery.**
- **NEW – Per MSCP clause 52.211-11, Liquidated damages for late delivery will now be assessed.**

I. Solicitation For Commercial Items (electronic Standard Form 1449)

1. Solicitation Number: 12-3J14-17-S-435
2. Solicitation Issue Date: August 31, 2017
3. Issued and Administered By:
USDA-Agricultural Marketing Service
Commodity Procurement Staff
Kansas City Contracting Branch
Beacon Facility- Mail Stop 8718
P.O. Box 419205
Kansas City, MO 64141-6205
4. Method of Solicitation: Sealed Bidding/Invitation for Bid
5. Offer due Date/Local Time: September 14, 2017 9:00 A.M. CT
6. Award Notification Date: By September 20, 2017 4:00 P.M. CT
7. Public Release of Award Date: By September 21, 2017 4:00 P.M. CT
8. Solicitation Information Contact:
Name: Trevor Wilson
Telephone Number: 816-926-1564
E-mail: trevor.wilson@ams.usda.gov
9. This Acquisition is:
// Unrestricted
/x/ Set-Aside for:
Small Business (75 percent) Any small business concern proposing to furnish a product that it did not itself manufacture must furnish the product of a small business manufacturer.

Offers received for these set-aside quantities from firms who are not eligible business concerns will not be considered. In the event the Government is unsuccessful in contracting with an eligible business concern(s) for the set-aside quantities, it may award the quantities to other business concerns. See FAR part 19.507.

10. Internet Address: <http://www.ams.usda.gov/selling-food/solicitations>

11. Delivery Type: F.O.B. Destination (unless otherwise specified in the delivery order competition)

12. Payment will be made by and submit invoices to:

Contractor shall submit invoices and attachments in the Web-Based Supply Chain Management (WBSCM) system.

13. Contract Type:

Indefinite Delivery/Indefinite Quantity

Fixed Price (Differential) with Economic Price Adjustment (cheese market price)

14. Schedule of Supplies

| Estimated Yearly Quantity | Minimum Contract Amount | Maximum Contract Amount |
|---------------------------|-------------------------|-------------------------|
| 40,550,400 pounds | 1 truckload | 58,687,200 pounds |

Estimated Cheese Sales Orders

The maximum contract amount stated is not guaranteed to be purchased. Please see the contract clause 52.216-22, Indefinite Quantity. See Bid Invitation Item Detail section elsewhere in this solicitation for a listing of maximum pounds by pack size.

The following list is provided as information to offerors and includes estimated quantities and destinations. Actual sales orders and destinations may vary from the list below due to changes in program requirements. CAPACITY OFFERED MAY EXCEED ANTICIPATED ORDER QUANTITY. The quantity awarded may be less than the quantity advertised due to program changes.

| | Estimated Monthly Maximums | | | | |
|-----------|----------------------------|---------------------------------------|-----------------------------------|--|-------------------------------------|
| | Cheese Process LVS 6/5-LB | Cheese Process SLC-LVS 6/5-LB Generic | Cheese Blend Amer SKM LVS 12/2-LB | Cheese Blend Amer SKM SLC LVS 6/5-LB Generic | K Cheese Process WHT SLC LVS 6/5-LB |
| January | 158,400 | 2,217,600 | 990,000 | 1,821,600 | 39,600 |
| February | 118,800 | 1,188,800 | 1,306,800 | 1,267,200 | 79,200 |
| March | 39,600 | 1,069,200 | 2,494,800 | 673,200 | 39,600 |
| April | 79,200 | 277,200 | 1,544,400 | 79,200 | 39,600 |
| May | 39,600 | 39,600 | 1,821,600 | 118,800 | 79,200 |
| June | 79,200 | 39,600 | 1,861,200 | 79,200 | 39,600 |
| July | 158,400 | 1,276,200 | 2,376,000 | 1,267,200 | 39,600 |
| August | 277,200 | 1,821,600 | 2,217,600 | 2,336,400 | 79,200 |
| September | 237,600 | 1,306,800 | 3,603,600 | 1,742,400 | 39,600 |
| October | 158,400 | 871,200 | 3,286,800 | 1,702,800 | 39,600 |
| November | 118,800 | 1,306,800 | 2,494,800 | 1,465,200 | 79,200 |
| December | 158,400 | 792,000 | 2,257,200 | 1,425,600 | 39,600 |
| TOTAL | 1,623,600 | 12,196,800 | 26,254,800 | 13,978,800 | 633,600 |

| | Cheese Blend Amer Skm Yel Reg SLC LVS 6/5-LB | Cheese Process Reg LVS 6/5_LB |
|-----------|---|-------------------------------------|
| January | 79,200 | 237,600 |
| February | 79,200 | 158,400 |
| March | 79,200 | 237,600 |
| April | 158,400 | 356,400 |
| May | 118,800 | 277,200 |
| June | 79,200 | 277,200 |
| July | 79,200 | 158,400 |
| August | 158,400 | 277,200 |
| September | 79,200 | 158,400 |
| October | 39,600 | 198,000 |
| November | 79,200 | 158,400 |
| December | 118,800 | 356,400 |
| TOTAL | 1,148,400 | 2,851,200 |

Estimated Destinations

CHEESE PROCESS LVS 6/5-LB

| City | Ship-to State |
|----------------|---------------|
| ALMA | AR |
| EL DORADO | AR |
| FORT SMITH | AR |
| NO LITTLE ROCK | AR |
| SPRINGDALE | AR |
| VAN BUREN | AR |
| JACKSONVILLE | FL |
| BOWLING GREEN | KY |
| CYNTHIANA | KY |
| SHEPERDSVILLE | KY |
| ALEXANDRIA | LA |
| BATON ROUGE | LA |
| MONROE | LA |
| NEW ORLEANS | LA |
| ST MARTINVILLE | LA |
| BRIGHTON | MI |
| CREEDMOOR | NC |
| SALISBURY | NC |
| CINCINNATI | OH |

CHEESE PROCESS SLC-LVS 6/5
GENERIC

| City | Ship-to State |
|----------------|---------------|
| ALMA | AR |
| BENTONVILLE | AR |
| BLYTHEVILLE | AR |
| CABOT | AR |
| EL DORADO | AR |
| FAYETTEVILLE | |
| FORT SMITH | AR |
| LITTLE ROCK | AR |
| NO LITTLE ROCK | AR |
| ROGERS | AR |
| SPRINGDALE | AR |
| TEXARCANA | AR |
| VAN BUREN | AR |
| WEST MEMPHIS | AR |
| FRESNO | CA |
| LOS ANGELES | CA |
| ONTARIO | CA |
| POMONA | CA |
| SACRAMENTO | CA |

| | |
|---------------|----|
| CLEVELAND | OH |
| DAYTON | OH |
| MCALESTER | OK |
| AUSTIN | TX |
| GRAND PRAIRIE | TX |
| HOUSTON | TX |
| LUBBOCK | TX |
| MCALLEN | TX |
| SAN ANTONIO | TX |

| | |
|----------------|----|
| ROCKY HILL | CT |
| JACKSONVILLE | FL |
| DES MOINES | IA |
| MASON CITY | IA |
| BERKELEY | IL |
| GRANITE CITY | IL |
| BOWLING GREEN | KY |
| CYNTHIANA | KY |
| LOUISVILLE | KY |
| OWENSBORO | KY |
| SHEPERDSVILLE | KY |
| ALEXANDRIA | LA |
| BATON ROUGE | LA |
| MONROE | LA |
| NEW ORLEANS | LA |
| ST MARTINVILLE | LA |
| CHICOPEE | MA |
| TAUNTON | MA |
| WILMINGTON | MA |
| WORCESTER | MA |
| BRIGHTON | MI |
| GRAND RAPIDS | MI |
| WYOMING | MI |
| NEWPORT | MN |
| BATESVILLE | MS |
| CORINTH | MS |
| JACKSON | MS |
| CREEDMOOR | NC |
| SALISBURY | NC |
| LINCOLN | NE |
| OMAHA | NE |
| ALBUQUERQUE | NM |
| BINGHAMTON | NY |
| BRENTWOOD | NY |
| BROOKLYN | NY |
| BUFFALO | NY |
| HALFMOON | NY |
| HOLLEY | NY |
| MALONE | NY |
| MILTON | NY |
| NEWARK | NY |
| YORKVILLE | NY |
| CINCINNATI | OH |
| CLEVELAND | OH |
| COLUMBUS | OH |
| DAYTON | OH |
| SPRINGFIELD | OH |
| MCALESTER | OK |
| MILWAUKIE | OR |

| | |
|-----------------|----|
| COAL TOWNSHIP | PA |
| DUNCANSVILLE | PA |
| PHILADELPHIA | PA |
| WILKES-BARE | PA |
| YORK | PA |
| FORT MILL | SC |
| LEXINGTON | SC |
| COOKEVILLE | TN |
| KNOXVILLE | TN |
| AUSTIN | TX |
| EL PASO | TX |
| GRAND PRAIRIE | TX |
| HOUSTON | TX |
| LUBBOCK | TX |
| MCALLEN | TX |
| SAN ANTONIO | TX |
| CLEARFIELD | UT |
| WEST JORDAN | UT |
| CULPEPPER | VA |
| MADISON HEIGHTS | VA |
| RICHMOND | VA |
| ALGONA | WA |
| SPOKANE | WA |
| RIPLEY | WV |

CHEESE BLEND AMER SKM
LVS 12/2-LB

| City | Ship-to State |
|---------------|---------------|
| PHOENIX | AZ |
| TUCSON | AZ |
| GARDEN GROVE | CA |
| LOS ANGELES | CA |
| MODESTO | CA |
| RICHMOND | CA |
| SAN DIEGO | CA |
| SAN FRANCISCO | CA |
| SANTA ROSA | CA |
| DENVER | CO |
| WASHINGTON | DC |
| DES MOINES | IA |
| NAMPA | ID |
| CHICAGO | IL |
| LOUISVILLE | KY |
| WINCHESTER | KY |
| DELHI | LA |
| NEW ORLEANS | LA |
| BATTLE CREEK | MI |

CHEESE BLEND AMER SKM
SLC LVS 6/5-LB GENERIC

| City | Ship-to State |
|---------------|---------------|
| BIRMINGHAM | AL |
| CLANTON | AL |
| FORT SMITH | AR |
| LITTLE ROCK | AR |
| SPRINGDALE | AR |
| VAN BUREN | AR |
| PHOENIX | AZ |
| GARDENA | CA |
| LOS ANGELES | CA |
| ONTARIO | CA |
| PICO RIVERA | CA |
| POMONA | CA |
| SAN DIEGO | CA |
| VERNON | CA |
| LOVELAND | CO |
| DELAWARE CITY | DE |
| AUBURNDALE | FL |
| JACKSONVILLE | FL |
| PUNTA GORDA | FL |

| | |
|---------------|----|
| BENTON HARBOR | MI |
| CADILLAC | MI |
| CARO | MI |
| CLARE | MI |
| COMSTOCK PARK | MI |
| DETROIT | MI |
| FLINT | MI |
| LANSING | MI |
| OSSINEKE | MI |
| VULCAN | MI |
| CROOKSTON | MN |
| GRAND RAPIDS | MN |
| MAPLEWOOD | MN |
| ROCHESTER | MN |
| BRIDGETON | MO |
| KANSAS CITY | MO |
| SIKESTON | MO |
| SPRINGFIELD | MO |
| JACKSON | MS |
| HELENA | MT |
| FARGO | ND |
| ALBUQUERQUE | NM |
| FARMINGTON | NM |
| LAS CRUCES | NM |
| ROSWELL | NM |
| BRENTWOOD | NY |
| SYRACUSE | NY |
| GROVE CITY | OH |
| LOGAN | OH |
| TOLEDO | OH |
| ALLENTOWN | PA |
| DELMONT | PA |
| DUQUESNE | PA |
| ERIE | PA |
| HARRISBURG | PA |
| PHILADELPHIA | PA |
| WILKES-BARRE | PA |
| COLUMBIA | SC |
| DYERSBURG | TN |
| MEMPHIS | TN |
| NASHVILLE | TN |
| DALLAS | TX |
| HOUSTON | TX |
| LAREDO | TX |
| PHARR | TX |
| SAN ANTONIO | TX |
| TYLER | TX |
| MILWAUKEE | WI |

| | |
|----------------|----|
| ATLANTA | GA |
| CLEVELAND | GA |
| DOUGLAS | GA |
| FAIRBURN | GA |
| KENNESAW | GA |
| LEESBURG | GA |
| MACON | GA |
| TIFTON | GA |
| WARNER ROBINS | GA |
| EMMETT | ID |
| GRANITE CITY | IL |
| FORT WAYNE | IN |
| INDIANAPOLIS | IN |
| VINCENNES | IN |
| BOWLING GREEN | KY |
| CYNTHIANA | KY |
| OWENSBORO | KY |
| SHEPERDSVILLE | KY |
| ALEXANDRIA | LA |
| BATON ROUGE | LA |
| MONROE | LA |
| NEW ORLEANS | LA |
| SHREVEPORT | LA |
| ST MARTINVILLE | LA |
| CHICOPEE | MA |
| TAUNTON | MA |
| WILMINGTON | MA |
| WORCESTER | MA |
| BALTIMORE | MD |
| JESSUP | MD |
| AUGUSTA | ME |
| NEWPORT | MN |
| KANSAS CITY | MO |
| BATESVILLE | MS |
| CORINTH | MS |
| JACKSON | MS |
| HELENA | MT |
| CREEDMOOR | NC |
| SALISBURY | NC |
| FARGO | ND |
| CONCORD | NH |
| NEWARK | NJ |
| VINELAND | NJ |
| MILWAUKIE | OR |
| DUNCANSVILLE | PA |
| PHILADELPHIA | PA |
| FORT MILL | SC |
| LEXINGTON | SC |
| SIOUX FALLS | SD |

| | |
|-----------------|----|
| COOKEVILLE | TN |
| JOHNSON CITY | TN |
| KNOXVILLE | TN |
| MEMPHIS | TN |
| AUSTIN | TX |
| GRAND PRAIRIE | TX |
| HOUSTON | TX |
| LUBBOCK | TX |
| MCALLEN | TX |
| SAN ANTONIO | TX |
| CLEARFIELD | UT |
| WEST JORDAN | UT |
| CHESAPEAKE | VA |
| CULPEPPER | VA |
| MADISON HEIGHTS | VA |
| NEWPORT NEWS | VA |
| RICHMOND | VA |
| ALGONA | WA |
| SPOKANE | WA |
| RIPLEY | WV |
| CHEYENNE | WY |
| MILLS | WY |

K CHEESE PROCESS WHT
SLC LVS 6/5-LB

| City | Ship-to State |
|---------|---------------|
| CLIFTON | NJ |

CHEESE BLND AMER SKM
YEL REG SL LVS 6/5-LB

| City | Ship-to State |
|-------------|---------------|
| NAMPA | ID |
| KANSAS CITY | MO |
| HELENA | MT |

CHEESE PROCESS REG
LVS 6/5-LB

| City | Ship-to State |
|-------------|---------------|
| NAMPA | ID |
| KANSAS CITY | MO |
| HELENA | MT |
| FARGO | ND |
| GALLUP | NM |
| TAHLEQUAH | OK |

PINE RIDGE

SD

15. Accounting and Appropriation Data: *TAS::unknown*

The commodities procured under this solicitation are currently for the following programs(s):

Section of Public Law Program Name

/ 32/6E The National School Lunch Program

/ 32/6E Child and Adult Care Feeding Programs

/ 32/6E Summer Food Service Program

/ 311 Nutrition Services Incentive Program

/ 4A Food Distribution Program on Indian Reservations

/ 17 Commodity Supplemental Food Program

/ 104 The Emergency Food Assistance Program

16. Solicitation incorporates FAR provisions 52.212-1, 52.212-3 and clauses 52.212-4 and 52.212-5. These provisions and clauses are included within this document.

17. USDA Contracting Officer

a. UNITED STATES OF AMERICA /S/ Jeffrey F. Jackson

II. Additional provisions and clauses for IDIQ Cheese Contracts

52.212-4 (a)(2)(B) – ADDENDUM

- Proof of product conformance as evidenced by:
 - Copies of Certificate of Analysis (COA) and/or
 - Certificate of Conformance (Per FAR Clause 52.246-15) and/or
 - The AMS Commodity Inspection Certificate or Graders Memorandum
 - If contractor elected to comply with official inspection by AMS; the contractor shall bear the expense of AMS inspection.
 - Procedures and a schedule of fees for these services may be obtained by contacting: AMS / Kenneth Vorgert at phone: 630.437.5037 or email: ken.vorgert@ams.usda.gov

52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (April 2014)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at [41 U.S.C. 4712](#) by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR [3.908](#)

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under [41 U.S.C. 4712](#), as described in section [3.908](#) of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

(End of clause)

52.211-16 Variation in Quantity (Apr 1984)

Variation in Quantity (Apr 1984)

- (a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) of this clause.
- (b) The permissible variation shall be limited to:

See Clause 4A52.216-19 Percent increase

See Clause 4A52.216-19 Percent decrease

This increase or decrease shall apply to the Delivery Order (WBSCM Purchase Order) item quantity (i.e. net weight).

(End of clause)

4A52.216-19 Delivery Order – Limitations

- 1) The Government shall request delivery of supplies in truckload quantities to the states shown in the invitation item details attributes page of WBSCM. The table below identifies the truckload target quantity and acceptable variations in quantity for the specified type of cheese.

| Cheese Pack Size | Lower Quantity Limit | Target Quantity/ Variation Limit, see Clause 52.211-16 | Upper Quantity Limit |
|----------------------------------|-----------------------------|---|-----------------------------|
| All Process Cheese Pack Sizes | 39,600 | 39,600 lbs. +/- Zero Percent | 39,600 lbs. |

- 2) The Government may make changes and/or cancellations to delivery orders by giving the Contractor no less than 48 hours' notice of the change. If the Government cancels an order and the Contractor can provide evidence satisfactory to the Government that it has already packaged the order as required by the contract, the Government will accept the commodity.
- 3) The commodity ordered shall be delivered by the contractor not later than the delivery period set forth in the Purchase Order. No extensions will be granted due to weekends or Federal holidays.

For shipments of commodity in excess of two stop-offs and a final destination, the adjustment to the contract price will be mutually agreed upon prior to delivery.

452.211-74 Period Of Performance (Feb 1988)

The base period of performance of this contract is from 1/01/2018 through 12/31/2018.

(End of Clause)

452.211-75 Effective Period Of The Contract (Feb 1988)

The effective period of this contract is from contract award date through December 31, 2018.

(End of Clause)

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 or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from date of the award of this contract through December 31, 2018.

(b) All delivery 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 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 only if authorized in the Schedule.

(End of clause)

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 one truckload, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(1) *Maximum order.* The Contractor is not obligated to honor— Any order for a single item in excess of the balance of the contract maximum or Contractor's offered capacity for the applicable

delivery period, whichever is less;

(2) Any order for a combination of items in excess of items in excess of the balance of the contract maximum or Contractor's offered capacity for the applicable delivery period, whichever is less; or

(3) A series of orders from the same ordering office within 31 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(b) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (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.

(c) 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 7 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.

(End of clause)

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 90 days after the through date in clause 452.211-74.

(End of clause)

452.216-73 Minimum and Maximum Contract Amounts (Feb 1988)

During the period specified in FAR clause 52.216-18, Ordering, the Government shall place orders totaling a minimum of the amount shown in the Schedule of Supplies' "Minimum Contract Amount", but not in excess of the amount shown in the "Maximum Contract".

(End of Clause)

4A52.216-1 Delivery Order Procedures

A. Ordering of Commodity Procedure

The Government shall issue delivery instructions to the Contractor via a Purchase Order at least seven (7) calendar days prior to the first day of each delivery period (e.g. 10/1-15) scheduled in the contract. Contractor shall comply

with the instructions in the delivery instructions. If a delivery instruction is issued less than seven (7) calendar days prior to the first day of the contracted delivery period, the delivery period shall be extended by the number of days the delivery instructions is issued late. Contractor shall not be entitled to any extension of the delivery period unless it furnishes evidence satisfactory to the Government that it was prepared to perform during the contracted delivery period.

- 1) For each allocation period of contract performance, the awarded price and capacity of all Contractors in good standing will be considered for USDA/Food and Nutrition Service food requisitions. In addition to price and capacity, factors considered in ordering will include the time of shipment, the total cost to the Government to deliver the product to the ultimate destination, minimum amount guaranteed, maximum quantity limit, set-aside(s), and the responsibility of the Contractor as demonstrated by past performance under the contract, including, but not limited to, quality and timeliness.
- 2) Ordering of commodity under this contract shall be accomplished by issuance of a Purchase Order not less than 30 calendar days before the required delivery period except in the case of emergencies. In the case of an emergency, commodity may be ordered by telephone, facsimile, or electronic commerce. The Government shall confirm telephone requests in writing.
- 3) The Contractor may increase their stated monthly or delivery period capacity if the Government agrees to the capacity change. Changes to the capacity will not affect overall maximum contract quantity.
- 4) If the Contractor intends to use AMS for quality assurance, the Government shall allocate a minimum of three (3) truckloads per month to the Contractor unless a smaller quantity is requested by the consignee.
- 5) USDA may modify the allocation of products ordered under the contract because of changes in program requirements; provided USDA complies with the overall minimum-maximum amounts for the contract, and the contractor agrees to the change in allocations among pack sizes.
- 6) An agency official independent of the contracting officer will serve as the delivery order ombudsman. The ombudsman will review complaints from contractors and ensure contractors are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The following individual has been appointed the delivery order ombudsman for contracts issued by this contracting activity.

Jack David Tuckwiller
USDA-Agricultural Marketing Service Commodity Procurement Staff
1400 Independence Ave., SW, Room 3522-S, STOP 0239
Washington, DC 20250-0239
(202)720-2784 or by email: david.tuckwiller@ams.usda.gov

Any contractor who is not satisfied with their complaint's resolution by a contracting activity ombudsman may request the Departmental Task Order Ombudsman to review the complaint. The Chief, Procurement Policy Division, Office of Procurement and Property Management, has been designated as the Departmental Task Order Ombudsman.

B. Maximum EPA Price: If the previous month's average price for 40-block and/or barrel cheese exceeds \$2.25 per pound (referred to as the maximum price), the Government reserves the right to suspend ordering under the contract.

4A52.216-2 Compensation to the Contractor for Government Failure to Order Minimum Contract Amount

If the Government fails to order the minimum contract amount in contract clause 452.216-73, Minimum and Maximum Contract Amounts, the Contractor and Government expressly agree that the Government shall pay, and the Contractor shall accept, the sum of \$1,800.00 as payment in full and exclusive right and remedy for the Government not ordering the minimum contract amount.

(End of Clause)

52.242-15 Stop-Work Order (Aug 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)

4A52.247-1 Seals on Transportation Conveyances

(a) Suppliers of commodities, products and/or services—under the supervision of a USDA-AMS certification agent, when applicable—shall be responsible for placing a seal(s) on all cargo doors of each transportation conveyance upon completion of loading, partial unloading, inspection, or servicing.

(b) Seals must meet the [American Society for Testing and Materials \(ASTM\) Standard, \(F-1157-04](#), and/or the International Organization for Standards (ISO) 17712-2010. Seals shall be 1/8-inch diameter cable, high security bolt, barrier-type, or equivalent device which can only be removed by bolt cutter type tools. Seals shall be sequentially numbered. The contractor or its agent shall provide a sufficient number of barrier-type seals to ensure security of the load while in route through final destination. (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 (multi-stop)).

(c) The seal numbers shall be documented on the Bill of Lading, and shipment manifest, certificate, or other delivery documents, as applicable, which must be signed or acknowledged by the carrier or its agent.

(d) It will be the responsibility of the Contractor to provide sufficient number of seals to the carrier service and to ensure that the trailer is sealed after each delivery location (when destined for multiple recipients).

The seal number must be recorded on the appropriate delivery document and correspond with the applied seal at the time of arrival at the next destination.

(e) 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.

(f) Deliveries will be rejected, in which seals have not been used to secure all cargo doors, if:

- the seal listed on the Bill of Lading does not match the seal number recorded on the Bill of Lading;
- the seal is broken;
- the seal is missing, or
- the seal has been removed prior to the transportation conveyance reaching its unloading point.

(g) A rejected conveyance will only be accepted after a Condition of Container Inspection has been performed by Agricultural Marketing Services (AMS) or Federal Grain Inspection Service (FGIS). AMS or FGIS must subsequently issue a Certificate of Quality and Condition that documents that the Condition of Container meets the applicable U.S. Standards for Condition of Food Containers. If this inspection is performed at a location other than the contracted delivery point all cargo doors must be sealed and the seal numbers documented by the Federal Inspection Agency on the Certificate.

Conditions of Container Inspections arrangements are available by contacting: National Field Director Dairy Grading Branch (630) 810-9999.

The Contractor is responsible for payment of all fees incurred as a result of a Condition of Container Inspection.

(End of clause)

52.203-2 Certificate of Independent Price Determination (Apr 1985)

The offeror certifies that—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

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

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision _____ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of provision)

4A52.214-1 Electronic Submission of Bids – Addendum

(e) WBSCM Offer Information

Work Instruction for LTC offer submission may be found at:

http://www.fsa.usda.gov/Internet/FSA_File/wbscm_work_instructions.pdf under “WI and Follow On Activities.”

Prospective contractors are responsible for starting the applicable processes early in the offering period and completing the applicable processes soon enough to ensure that their offer, modification, or withdrawal is received by the exact time specified herein for receipt of offers. Offer submission may include processes, such as: register vendor, authorize user access and roles, create eAuthentication account, accept WBSCM rules of behavior, register plants, assign users to plants, save plant responses and submit vendor response (offer).

Quantities will be awarded in increments of USDA standard truckload quantities, subject also to the offer's quantity constraints. Quantity constraints shall be entered in pounds.

An offer requires timely submission of all plant responses AND a vendor response. Plant response consists of:

- 1) STATE PRICES for applicable items in the Bid invitation item detail attributes section and
- 2) CERTIFICATION ANSWERS in the ATTRIBUTES section of the invitation header tab. Important: Submission of the plant response just saves the data entered – the vendor response must also be submitted.

Vendor response consists of:

- 1) Entering quantity CONSTRAINTS to limit the offer to a quantity to less than or equal to the maximum invitation quantity, and

- 2) Plant responses – submission of vendor response before the Offer Due Date and Time also physically submits all previously submitted/saved plant responses. Failure to timely submit the vendor response will result in no offer for the applicable solicitation.

It is imperative that the offeror verify the accuracy of their offer. The offeror has the ability to call up the Vendor Response Log as part of the bid submission process by selecting the “Vendor Response Log” button and/or the offer may be printed from the WBSCM portal path Supplier>Bid Management>Vendor Response Log.

4A52.214-2 Basis of Offers

- 1) Offers shall be submitted as a differential price per pound to the CME Group (CME) barrel cheese cash market price for the Process cheese.
- 2) The Differential Price in WBSCM will accept positive, zero (\$0.0000), and negative offer prices (i.e., - \$0.0300). A blank price field will be interpreted as no offer for a particular state. A price of zero (\$0.0000) IS A VALID PRICE and is an offer of flat market price to the CME Group. Anticipated delivery cities by type and/or pack are identified elsewhere within this solicitation. Offerors are encouraged to enter a price for each state displayed on the Item Detail Attributes page.
- 3) The contract price for a delivery month shall be the total of the accepted differential price, PLUS the following economic price adjustment (EPA): the previous month average (PMA) of the CME Group cash barrel cheese trading as reported in USDA’s *Dairy Market News*.
- 4) The month average for the PMA is a simple average of all the daily closing prices for barrel cheese during the calendar month of the CME Group cash trading. Previous month means the first full Gregorian calendar month before the first day of the delivery period on the contract delivery order.
- 5) In the event the CME Group prices are not available or do not accurately represent the market (as determined by the Government), the Government may use the National Agricultural Statistics Service (NASS) cheese price series (or suitable replacement) as the basis for calculating the PMA value for barrel or block cheese.
- 6) Offerors may submit offers for less than the quantities indicated.

52.216-1 Type of Contract (Apr 1984)

The Government contemplates award of a fixed-price, with economic price adjustment indefinite delivery indefinite quantity contract resulting from this solicitation.

(End of provision)

52.216-27 Single or Multiple Awards (Oct 1995)

The Government may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

452.216-72 Evaluation Quantities--Indefinite-Delivery Contract (Feb 1988)

To evaluate offers for award purposes, the Government will apply the offeror’s proposed fixed-prices plus estimated cheese market price(s) to the estimated sales orders included in the solicitation in section I., and will add other direct costs, if applicable.

(End of provision)

4A52.226-1 Farmer-Owned Cooperatives Participation

(a) In order to implement statutory requirements, farmer-owned cooperatives, regardless of their size status as a large or small business according to the Small Business Administration's (SBA) categorizations, will not be prohibited from participation in commodity purchases made with USDA funds (7 U.S.C 2209f).

(b) To comply with the statutory requirement stated in paragraph (a), all responsible (*See* FAR 9.104-1) farmer-owned cooperatives' offers will be considered for award of commodity contracts, using the evaluation criteria set forth in the solicitation, including the portions of solicitations normally restricted to small business concerns.

(c) In order to be eligible for consideration on the set-aside portions of a commodity purchase, farmer-owned cooperatives must certify their business type as either a "large farmer-owned cooperative" or "small farmer-owned cooperative," as determined using SBA size standards, when submitting an offer.

(d) The *nonmanufacturer rule* defined in FAR Part 19 applies to any subcontracting arrangements.

(e) Large farmer-owned cooperatives are not eligible to be considered for, or receive, price evaluation preferences specific to certain special categories of small businesses, such as HUBZones or small disadvantaged businesses.

(f) An offer from a small business to supply manufactured products of small and large businesses shall be divided and submitted separately using separate WBSCM logon ID's. An offer from a farmer-owned cooperative large business to supply manufactured products of both a small business and other than small shall be divided and submitted separately using separate WBSCM logon ID's.

(End of provision)