

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER	PAGE 1 OF 42	
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER 2000006983/123J1420R0433	6. SOLICITATION ISSUE DATE 05/11/2020		
7. FOR SOLICITATION INFORMATION CALL:	a. NAME Valerie Dinkel, Contracting Officer		b. TELEPHONE NUMBER (No collect calls) 202-934-0461	8. OFFER DUE DATE/ LOCAL TIME 05/20/2020 1:00 PM CT		
	9. ISSUED BY U.S. Department of Agriculture Agricultural Marketing Service Commodity Procurement Programs 1400 Independence Avenue, SW Washington, DC 20250		10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: <u>10</u> % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: <input checked="" type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> EDWOSB <input type="checkbox"/> 8 (A) <input type="checkbox"/> SIZE STANDARD:			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>		13b. RATING	
15. DELIVER TO Destinations to be identified on individual orders			16. ADMINISTERED BY See Block 9			
17a. CONTRACTOR/ OFFEROR	CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY			
TELEPHONE NO.			18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input checked="" type="checkbox"/> SEE ADDENDUM			
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>			18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input checked="" type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Canned Fruit (see schedule) per applicable Commodity Specification(s) Contract Type: Indefinite Delivery, Indefinite Quantity Period of Performance: Date of Award through 12-months <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>					
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For Govt. Use Only)		
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA				<input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED		
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA				<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED		
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> 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			<input type="checkbox"/> 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)	31c. DATE SIGNED			

B. CONTINUATION OF THE SF 1449**B.1 Continuation of Block 16—ADMINISTERED BY****B.1.1. CONTRACTING OFFICER**

The Contracting Officer (CO) has the overall responsibility for the administration of this contract. The CO alone, without delegation, is authorized to take actions on behalf of the Government to amend, modify or deviate from the contract terms, conditions, requirements, specifications, details and/or delivery schedules; issue task orders against the contract; make final decisions on disputed deductions from contract payments for nonperformance, or unsatisfactory performance; terminate the contract for convenience or default; and issue final decisions regarding contract questions or matters under dispute. However, the CO may delegate certain other responsibilities to the CO Contracting Officer's Representatives (COR). All delegated duties will be specified in writing by a COR Appointment and Delegation Notice.

[End of Text]

B.2 Continuation of Block 18b—INVOICES**B.2.1 INVOICE SUBMISSION**

Invoices submitting payment must be submitted by the Contractor electronically via <https://portal.wbsem.usda.gov/>.

B.3 PRICING SCHEDULE

Contractor shall provide a detailed pricing schedule by entering prices in USDA's Web Based Supply Chain Management System (WBSMC) for each State. All prices shall be firm fixed priced FOB Destination. Pricing shall be the same for all delivery points within each State and be inclusive of all delivery charges, including multiple 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. Prices must be submitted for all States for each material the offeror is interesting in supplying.

Materials planned for this acquisition are:

Material	Description	Set-Aside	Percentage
100211	Mixed Fruit Can 24/300	SDVOB	10%
100212	Mixed Fruit Ex Lt Can 6/10	SDVOB	10%
111253*	Mixed Fruit Can 12/2.5		
100218	Peaches Cling Slices Can 24/300	SDVOB	10%
100219	Peaches Cling Slices Ex Lt Can 6/10	SDVOB	10%
100220	Peaches Cling Diced Ex Lt Can 6/10	SDVOB	10%
111244*	Peaches Cling Slices Can 12/2.5		
111245*	Peaches Cling Halves Can 12/2.5		
100223	Pears Can 24/300	NA	
100224	Pears Slices Ex Lt Can 6/10	NA	

100225	Pears Diced Ex Lt Can 6/10	SDVOB	10%
100226	Pears Halves Ex Lt Can 6/10	NA	

*These are proposed materials that may be added at a later date. Prices will be negotiated if they become available for purchase.

The orders included in this solicitation are a representative sample of the anticipated orders for the intended contracts. Offerors are asked to include pricing for all states for any material they bid on. Offerors will not be given a monthly schedule of awards, but rather a minimum and maximum number of orders for the life of the contract.

Offerors are highly recommended to input their constraints per delivery window or per month.

Canned products will be accepted for up to 18 months from the date of inspection.

The requirements for checkloading by USDA Inspectors outlined in the Commodity Specifications for Canned Fruit are NOT applicable to Purchase Orders issued against this solicitation.

Pack Year - For products delivering in calendar year 2020, product produced in calendar year 2019 and 2020 will be accepted. For product delivering in subsequent calendar years, product will be accepted from the current and previous year.

For a new-to-USDA contractor and existing contractors who are bidding on new products, a probationary period will be implemented in which awards are limited to 10 truckloads per product. Contractor must demonstrate successful delivery of at least five (5) truckloads of product in order to be removed from probationary status on future solicitations. For the purposes of this rule, successful delivery is defined as product delivered on-time and in acceptable condition according to the terms and conditions of the contract. Any delivery problems directly attributable to the Government will not be held against the contractor.

Offerors who intend to use more than one processing plant and shipping point for contracts awarded under this solicitation, other than the processing plant and shipping point entered in their bids, may submit a list of their approved processing plants and shipping points on a separate sheet of paper to be uploaded in WBSCM, and to be submitted with their bids.

Purchases will be made on an f.o.b. destination basis to cities on this Solicitation. Destination quantities listed are estimates and subject to adjustment based on offerings, changes in recipient needs, market conditions, and program operations.

All prime vendors are reminded that they are prohibited from subcontracting with companies or individuals that have been suspended or debarred.

(End of text)

C. CONTRACT CLAUSES

C.1 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/these address(es): <https://www.acquisition.gov>

<u>FAR Clause</u>	<u>Title</u>
52.212-4	Contract Terms and Conditions-Commercial Items (OCT 2018)
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (APR 2014)
52.204-13	System for Award Management Maintenance (OCT 2018)
52.232-11	Extras (APR 1984)
52.232-18	Availability of Funds (APR 1984)
52.232-40	Preventing Accelerated Payments to Small Business Subcontractors (DEC 2013)
52.242-13	Bankruptcy (JUL 1995)
52.242-15	Stop-Work Order (AUG 1989)
52.242-17	Government Delay of Work (APR 1984)
52.244-6	Subcontracts for Commercial Items (JAN 2019)
52.247-34	F.o.b Destination (NOV 1991)
52.247-58	Loading, Blocking, and Bracing of Freight Car Shipments (APR 1984)
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)
52.253-1	Computer Generated Forms (JAN 1991)

(End of Clause)

52.209-1 Qualification Requirements (Feb 1995)

(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.

USDA, AMS Commodity Procurement Program
Andrea Lang, New Vendor/Small Business Coordinator NewVendor@usda.gov 202-720-4237
<https://www.ams.usda.gov/selling-food/becoming-approved>

(c) 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.

(d) 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.

(e) 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.

(End of clause)

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 per calendar day of delay, not to exceed 45 days of delay, at the following rates:

Commodity	Rate	Per Net Weight
Canned Dried Beans / Canned Fruit / Canned Juice / Canned Vegetables	\$0.0025	Lb/day

(b) If the Government terminates this contract in whole or in part under 52.212-4 paragraph (m) *Termination for cause*, 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 52.212-4 paragraph (f) *Excusable delays* in this contract.

(End of clause)

52.211-16 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:
Zero Percent increase

Zero Percent decrease

This increase or decrease shall apply to the total item quantity for each destination.

Notwithstanding the above, the vendor shall not be liable for any decrease in availability of materials if such availability is due to harvest limitations. Such decrease shall be limited to 10% of the vendor's total constraints within a 12-month delivery period. It is incumbent upon the vendor to provide clear and convincing evidence to the Contracting Officer that such limitations exist.

(End of clause)

C.1.1 ADDENDA TO 52.212-4

(a) Inspection/Acceptance – 52.212-4 Addendum.

(1) *Inspection.* The Government reserves the right to perform quality assurance at source; source includes, but is not limited to, contractor's manufacturing facility, packaging facility, warehouse, in-house laboratory, subcontractor's facilities, etc.

(2) *Acceptance.* Formal acceptance shall occur when the Government approves the invoice for payment.

(c) Changes – 52.212-4 Addendum.

The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Method of shipment or packing.
- (2) Place of delivery.
- (3) Time of delivery.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract, unless the contract terms provide for regional delivery pricing that covers cost adjustments. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Definitions – 52.212-4 Addendum.

(1) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

- (A) The solicitation, or amended solicitation, provides a different definition;
- (B) The contracting parties agree to a different definition;
- (C) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or

(D) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(2) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acquisition.gov/far> at the end of the FAR, after the FAR Appendix.

(3) Definitions applicable to this solicitation—

“Agricultural Commodity” or “USDA Food” means a product grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients. Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise: (1) produced in the United States; and (2) commercially available in the United States at fair and reasonable prices from domestic sources. See clause 4A52.225-1, *U.S. Origin Product*.

“Commercial item” means

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and-

- (i) Has been sold, leased, or licensed to the general public; or
- (ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph(1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for-

- (i) Modifications of a type customarily available in the commercial marketplace; or
- (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

“Commercially available off-the-shelf (COTS) item” means any item of supply that is—

- (i) A commercial item (as defined in paragraph (1) of the definition in this section);
- (ii) Sold in substantial quantities in the commercial (retail) marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.

“United States” includes the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands.

“WBSCM” means USDA’s Web Based Supply Chain Management system which shall be used by the contractor and the Government for applicable contract transactions, as determined by the Government. USDA will provide the system at no charge for appropriate use by the contractor. WBSCM terminology, requirements, and processes shall automatically apply to the contract, as applicable. In the event of a conflict between WBSCM and FAR/AGAR terminology, FAR/AGAR terminology shall take precedence.

“WBSCM Purchase Order” or “WBSCM PO” means a contract that is accessible in the WBSCM system.

“Contract” is as defined by FAR, i.e., a mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. (See FAR 2.101 for the full definition.)

(4) Definitions for use with FAR Clause 52.225-5, Trade Agreements incorporated by reference in FAR clause 52.212-5. Note Trade Agreements only apply to packaging and container components, not agricultural commodities and their product.

“Least developed country” means any of the following countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia.

“Packaging and containers” means any substance intended for use as a component of materials used in manufacturing, packing, transporting or holding food if such use is not intended to have a technical effect in such food.

“World Trade Organization Government Procurement Agreement (WTO GPA) country” means any of the following countries: Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom.

(f) Excusable delays – 52.212-4 Addendum.

The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor, and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(o) Warranty – 52.212-4 Addendum.

(1) Liability for Losses 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 specifications, if such replacement is agreed to by USDA.

(2) Liability for Losses Due to Product Recalled for Health or Safety Risk

In the event the commodity or 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.

(s) Order of Precedence – 52.212.4 Addendum

Contracts issued pursuant to this Master Solicitation also incorporate the following documents as part of the contract: the applicable solicitation; the applicable commodity specification and/or supplement; the Contractor's offer; and the contract/WBSCM Purchase Order. If the contract documents are inconsistent or contradictory, the following order of precedence will prevail giving precedence in the following order:

- (1) Solicitation,
- (2) Commodity Specification and/or Supplement,
- (3) Other documents, exhibits, and attachments.

4A52.204-1 Contract Closeout and Past Performance Evaluation

(a) Closeout Reporting. Contractors shall fully complete and return all documents relating to contract completion and contract closeout. Completion and return of the aforementioned documents may be reported as part of vendor past performance evaluation.

(b) Past Performance Evaluation. The Government will prepare a past performance evaluation at the time the work under this contract and/or delivery order is completed. Evaluations will rate performance several areas (e.g. quality of product or service, cost control, timeliness of performance, business relations, and, when applicable, performance against, and efforts to achieve the goals identified in the small business subcontracting plan). Contractors will have an opportunity to comment on the Government evaluation. The past performance evaluation may be used by the Government to support a future award decision. Details on use of contractor performance assessment reporting system will be provided at a future date.

(End of clause)

4A52.204-2 Use of Electronic Data Interchange (EDI) or Other Automation Technologies (Apr 2020)

- (a) In the event that Electronic Data Interchange (EDI) functionality **or other automation technologies such as Robotics Process Automation** is utilized to facilitate electronic transactions between USDA and its contractors, it is the sole responsibility of the Contractor to ensure accuracy of electronically transferred data **from WBSCM**. The Government's WBSCM System shall serve as the system of record for all data exchanged **or retrieved**.
- (b) The Government shall not be liable to the Contractor for any delay or failure associated with EDI **or other automation technologies**. The Contractor's use of this service is at the Contractor's sole risk. For electronic or automated services provided by WBSCM to the contractor, the services are provided on an "as is" and "as available" basis. **For electronic or automated services provided by the contractor that interact with the WBSCM system, the USDA is not responsible for any costs incurred by the contractor related to the development, test or support of the services.** The Contractor shall be responsible for all fees associated with EDI. The Contractor is responsible for the confidentiality and security of its systems, **interfaces, interconnections**, and any documents that the customer receives from The Government pursuant to the contract.
- (c) The Government reserves the right to restrict, refuse, or cancel any participation in EDI services.

(a) In the event that Electronic Data Interchange (EDI) functionality is utilized to facilitate electronic transactions between USDA and its contractors, it is the sole responsibility of the Contractor to ensure accuracy of electronically transferred data. The Government's WBSCM System shall serve as the system of record for all data exchanged.

(b) The Government shall not be liable to the Contractor for any delay or failure associated with EDI. The Contractor's use of this service is at the Contractor's sole risk. The services are provided on an "as is" and "as available" basis. The Contractor shall be responsible for all fees associated with EDI. The Contractor is responsible for the confidentiality and security of its systems and any documents that the customer receives from The Government pursuant to the contract.

(c) The Government reserves the right to restrict, refuse, or cancel any participation in EDI services.

4A52.211-1 Delivery Instructions

The Government shall issue to the contractor electronic purchase orders (contracts) in WBSCM. Notification of the issuance of documents in WBSCM will be sent via email. The contractor shall be responsible for ensuring that it is capable of receiving email communications during the course of the contract. The contractor shall ensure that it has an accurate email address on file with the Government. The Government will not be responsible for any failure of contractor receipt of electronic information attributable to inoperable receiver equipment and/or software. The Government reserves the right, at its option, to issue Purchase Order by other means such as, but not limited to, facsimile transmission or regular mail.

(End of clause)

4A52.211-2 Advance Shipment Notice (ASN) and Unloading Appointment

(a) Contractor shall enter a WBSCM advanced shipment notice (ASN) on or before the date of shipment. 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. Advanced shipment notices shall contain:

- Shipper's name
- Commodity
- Sales Order or Requisition Number (SO or RN)
- Units per (SO or RN)
- Destination
- Purchase Order Number
- Ship date
- Mode of transportation. If truck, anticipated date of arrival.

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

(b) The creation of the ASN does not relieve the Contractor or subcontractor of their responsibility to obtain an unloading appointment.

(c) Appointments are required for all deliveries.

(d) Delivery appointments shall be made as far in advance of expected delivery as possible, but not less than 72 hours prior to delivery by contacting a responsible representative at the applicable Purchase Order Item's Ship-to-Address for an unload appointment. Reference the Purchase Order (PO) Number, PO Item Number, and when provided, the Sales Order (SO) Number and SO Item Number for which the appointment is being scheduled. Ramifications of failure to schedule an appointment or failure to arrive on time for an appointment are the full responsibility of the contractor

(e) The Contractor may deliver early if the recipient agency agrees to accept early delivery, there is no additional cost to the Government, and upon AMS personnel being available to perform any necessary check loading and acceptance requirements, if applicable.

(End of clause)

4A52.211-3 Regulatory Requirements for Commodities and Packaging (Sept 2019)

(a) The commodity shall conform to the applicable provisions of the "Federal Food, Drug, and Cosmetic Act" (21 U.S.C. 301 et. seq.), as amended, and the relevant regulations, including applicable Food Safety Modernization Act regulations (FSMA), and sections in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act). The contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations related to its performance under this contract.

(b) All containers and packaging materials shall be constructed to meet the requirements of the Food and Drug Administration (FDA) for safe contact with the packaged product. The contractor shall obtain and maintain documentation from the container or packaging material manufacturer to verify that the containers and packaging materials used in the contract were in compliance with the Government's regulatory requirements for safe contact with food products.

(c) If the contractor purchases packaging and container ingredients from a foreign country and/or the package and container is manufactured in a foreign country, the package and container SHALL NOT display country of origin labeling. Phrases including, but not limited to, "Made in [Name of Foreign Country.]" or "Product of [Name of Foreign Country.]" are strictly prohibited (see clause 4A52.225-1(f)).

(d) All containers and packaging materials shall be constructed to comply with the sum concentration levels of lead, cadmium, mercury, and hexavalent chromium addressed by the Coalition of Northeast Governors (CONEG) model legislation. The sum of the concentration levels of lead, cadmium, mercury, and/or hexavalent chromium present in any package or packaging component shall not exceed 100 parts per million. Concentration levels shall be determined using American Standard of Testing Materials test methods, as revised, or U.S. Environmental Protection Agency test methods for evaluating solid waste, S-W 846, as revised.

(End of clause)

4A52.211-4 Commodity/Packaging Labeling Requirements (Mar 2019)

(a) USDA Foods products must comply with all applicable FDA and USDA labeling requirements and any additional features outlined in product specifications.

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm513734.htm>

(1) Any deviations from the labeling requirements in this section must be approved by the Contracting Officer, in writing, prior to start of production.

(2) Primary packaging labels or shipping containers with missing or incorrect information must be corrected before the product can be shipped.

(b) PRIMARY PACKAGING (Immediate Container):

(1) FDA/USDA defines minimum label information on primary packaging:

(i) Company name

(ii) Company/Plant location or FSIS establishment number.

(iii) Food item

- (iv) Ingredient list
- (v) Allergen statement, as applicable
- (vi) Nutrition Facts Panel (except for foodservice pack products)
- (vii) Traceability code (see below)
- (viii) Cooking/heating/handling instructions, as applicable

(2) Commercial Labels. "Commercial" labels must be the processor's own retail (e.g. commercially available, off the shelf) label. (Commercially available off-the-shelf (COTS) item is described in the 52.212-4 definitions addendum section of this contract.) Distributors' labels are not allowed. If the vendor does not have a commercial label for retail/consumer sales, please refer to the minimum color requirements, exclusive of the package color, found in the commodity specifications documents. For some products, if the primary container does not allow the product to be visible, the label must provide a visual representation for the food.

(3) Traceable Product Codes. Labeling and packaging must meet all applicable FDA and USDA requirements and contain a code which allows traceability of the product in the event of a recall. When the company uses the same commercial label for the product certified as complying with USDA specifications, the identification system must differentiate between product manufactured for USDA contracts and non-USDA products.

(4) Nutrition Facts, Ingredients and Allergen statements. Consumer and individual sized containers/packages must include a Nutrition Facts Panel, ingredients, and allergen statement. The ingredient statement, even for single ingredient foods, must be included as a statement separate from the name of the product, e.g. Ingredients: _____. The allergen statement must comply with the Food Allergen Labeling and Consumer Protection Act (FALCPA) for any product which contains milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, soy or wheat. In accordance with FDA guidance, USDA does not encourage the use of voluntary allergen advisory labels/statements. Vendors must implement effective allergen controls. If advisory labels are used, they must comply with FDA labeling requirements and not be misleading.

Note: Vendors must provide nutrition information, ingredient and allergen statements, and Child Nutrition Program crediting information upon request for all USDA Foods products.

(c) SHIPPING CONTAINERS:

(1) Shipping container/carton labels must include:

- (i) USDA Material code
- (ii) Purchase order number
- (iii) Company name
- (iv) Company/Plant location or FSIS establishment number
- (v) Food item
- (vi) Ingredient list
- (vii) Allergen statement, as applicable
- (viii) Nutrition Facts Panel (foodservice pack products only)
- (ix) Traceability code
- (x) UPC symbol/code (see below)
- (xi) USDA Shield, when applicable

(2) Labeling and marking information must be water-fast, non-smearing, of a contrasting color, clear and readable.

(3) Information must be preprinted, stamped, or stenciled on each shipping container; or printed on a self-adhesive label and applied to each shipping container. Please refer to specification documents for sample layouts,

(4) Nutrition Facts, Ingredients and Allergen statements must be included on shipping containers when not required on the primary package. The ingredient statement, even for single ingredient foods, must be included as a statement separate from the name of the product, e.g. Ingredients: _____. The allergen statement must be provided in the format which complies with the Food Allergen labeling and Consumer Protection Act (FALCPA) for any product which contains milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, soy or wheat.

(5) UPC symbols/codes

(i) The UPC, symbol and code, called Interleaved 2 of 5 (I 2/5), must appear on each shipping container. The complete code, including the check digit, must be printed in machine-readable and human-readable form. The start and stop indicators will be included in the bar codes. Printing, readability, and scanability of the bar code must be in accordance with UPC guidelines published by:

GS1 US Corporate Headquarters Princeton Pike Corporate Center 1009 Lenox Drive, Suite 202
Lawrenceville, NJ 08648 Phone: 609.620.0200

<https://www.gs1us.org/what-we-do/about-gs1-us>

(ii) USDA has acquired a unique processor's identification number for the commodity purchase programs and will provide these item codes for the commodity contracts. This only applies to non-manufacturers for fruit and vegetable products that do not have a commercial retail product that corresponds to the USDA products.

(d) Inventory Control Information. The processor may include any additional information (including bar codes) for processor inventory control purposes. This information may be applied somewhere on the surface of the shipping container but must not cover or conflict with the labeling requirements.

(End of clause)

4A52.211-5 Compensation for Delays in Delivery

(a) 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. [\(Sample waiver requests are available online.\)](#) 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 Clause 52.211-11.

(b) 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.

(c) 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.

(End of clause)

4A52.211-6 Unitization Requirements (Sept 2019)

Shipments shall comply with the following unitization requirements:

(a) Unless otherwise specified by the Government, all shipments of packaged products shall be unitized (palletized and stretch wrapped).

(b) Pallets shall be:

(1) Constructed to facilitate the safe handling and transportation of the packaged product, as a unit, without loss or damage.

(2) A Number 2, four-way, reversible flush stringer with no broken runners or slats.

(3) Suitable for use in the shipment of food products.

(c) Plastic stretch wrap shall be:

(1) Constructed of a plastic film which is to be stretched a minimum of 50 percent beyond its original length when stretched around the pallet load.

(2) Applied as tightly as possible around all tiers of the palletized shipping containers. The shipping containers shall be held firmly in place by the stretch wrap.

(d) Pallet loads shall be:

(1) Stacked in such a way as to minimize the amount that shipping containers overhang the edges of pallets.

(2) Blocked and braced or otherwise loaded into the conveyance in a manner that prevents shifting during transit.

(e) USDA does not participate in a pallet exchange program.

(End of clause)

4A52.211-73 Attachments to Specifications (Feb 1988)

Specifications listed in Section D are hereby made part of this solicitation and any resultant contract.

(End of clause)

4A52.225-1 U.S. Origin Product (Jan 2018)

(a) The products of agricultural commodities acquired under this contract must be a product of 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”), except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients (*See* AGAR 470.103(b)). Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise: (1) produced in the United States; and (2) commercially available in the United States at fair and reasonable prices from domestic sources. See 4A52.225-2 U.S. Origin Product – Ingredient Waivers below.

(b) If the Contractor processes or handles products originating from sources other than the United States, the Contractor must have an acceptable identification and segregation plan for those products to ensure they are not used in commodities purchased under this Master Solicitation—except for commingled products (see paragraph (c)). This plan must be made available to an AMS representative and the

Contracting Officer or agent thereof upon request. The Contractor must ensure that the Contractor and any subcontractor(s) maintain records such as invoices, or production and inventory records evidencing product origin, and make such records available for review by the Government in accordance with FAR 52.214-26.

(c) For commodities that the Department has determined to be generally commingled, a commingled product shall be considered to be a product of the United States if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to the offeror, or obtains during the contract performance period specified in the solicitation, or a combination thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the United States. However, if the commodity can be readily stored on an identity preserved basis with respect to its country of origin, the Government may require that the commodity acquired under this contract be of 100 percent U.S. origin.

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

(e) 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 1) must be completed, and must be presented to an AMS representative, the Contracting Officer, or agent thereof upon request.

(f) FAR clause 52.225-5, Trade Agreements incorporated by reference in FAR clause 52.212-5 applies only to packaging and container components. Agricultural commodities and their products are exempt from 52.225-5.

(End of clause)

4A52.225-2 U.S. Origin Product – Ingredient Waivers

The requirement for a commodity and/or a component ingredient to be entirely produced and/or processed in the United States may be waived due to non-availability at fair and reasonable prices.

(a) Waived ingredients may be subject to the following two-part test to define a U.S. end product:

- (1) The article must be manufactured in the United States; and
- (2) The cost of domestic components must exceed 50 percent of the cost of all the components.

(b) The following ingredients are subject to the U.S origin product requirement:

- (1) [Reserved]
- (2) Waived ingredients may be acquired as a foreign end product without regard to the restrictions of the U.S origin product requirement.

(c) The following ingredients have been determined by the Contracting Activity as not available at fair and reasonable prices and are waived from all U.S. origin restrictions:

- (1) Vitamin A (Retinol Palmitate)
- (2) Vitamin D
- (3) Carageenan (stabilizing agent)
- (4) Sorbic Acid (preservative)

- (5) Potassium Sorbate (preservative)
- (6) Rennet (coagulant)

(End of clause)

4A52.225-3 U.S. Origin Verification and Tracebacks (Mar 2019)

When requested, contractors will make all paperwork available to USDA that confirms 100% domestic origin traceback from the destination or final package (whichever is applicable), to the origin orchard/field/vineyard/farm/etc., including all steps in the process.

(End of clause)

4A52.232-1 Contractor Expenses

Unless stipulated otherwise in the contract, all expenses incurred including but not limited to testing, analysis, fumigation, and certification requirements shall be the responsibility of the contractor.

(End of clause)

4A52.232-3 Invoicing

Electronic invoicing is authorized and required for this contract as referenced in 52.212-4(g).

- (1) *ASN as invoice* (if ASN is required). Contractor's advance shipment notice (ASN), entered in WBSCM in accordance with 4A52.211-2, will serve as the contractor's invoice, i.e., request for payment. Separate entry of an invoice using WBSCM's Supplier Self Service is no longer required.

ASN is not required on service contracts or some supplies (i.e., Raw Shelled Peanuts).

- (2) *Supporting documents*. When required by the contracting officer, contractor shall upload additional supporting documents when submitting their shipment receipt or ASN in WBSCM. This may include:

- (A) Proof of product conformance—as required in the applicable commodity specifications document or solicitation—such as:

- i. Official checkloading certificate(s), and/or
- ii. Certificate of Analysis (COA), and/or
- iii. Certificate of Conformance (per FAR Clause 52.246-15), and/or
- iv. AMS Commodity Inspection Certificate or Graders Memorandum.

- (B) Any waivers granted by the Contracting Officer, if applicable.

- (C) The Contracting Officer reserves the right to specify any combination of documents listed above to evidence proof of product conformance.

- (D) Bill of Lading signed by the recipient stating that quantity received is good (see clause 4A52.247-3, *Bill of Lading Notations*, for required contents of a bill of lading.)

- (3) *Authorization to pay*. The Government will not review an invoice for payment until all required supporting documentation has been received. In addition to the items in paragraph (2) above, all invoice payments must be supported by a receiving report (proof of delivery). A recipient-entered WBSCM goods receipt will serve as the receiving

report. The recipient (receiving official) should enter the goods receipt into WBSCM no later than the 2nd calendar day after delivery.

(4) *Payment due dates.* The due date for making an invoice payment is as follows—

Upon receipt of a proper invoice for:	Payment must be made as close as possible to but not later than:
<i>All other processed canned commodities (including fruits, vegetables, fish, and poultry products).</i>	30th day after receipt of a proper invoice.

4A52.246-1 Contract Quality Requirement

In accordance with FAR clause 52.246-11, Higher-Level Contract Quality Requirement) the following apply:

- 1) When contractor’s quality control system is not ready at the time specified by the Contractor for performance of quality assurance at source, the Contracting Officer may charge to the Contractor the additional cost of quality assurance.
- 2) The Contracting Officer may charge the Contractor for any additional cost of quality assurance when prior nonconformance makes re-surveillance necessary.

(End of Clause)

4A52.246-2 Food Defense Requirements (Sept 2019)

(a) Current and potential Contractor(s) and subcontractor(s) shall have an approved food defense plan in place at the time of bid opening/proposal due date as specified in the solicitation. The approved food defense plan 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).

(b) The documented and operational food defense plan must be audited and approved by USDA, AMS prior to the bid opening date of the solicitation. All nonconformance(s) listed in the audit report for poultry and livestock products must be addressed in writing within 14 days to the

Quality Assessment Division prior to the bid opening date of the solicitation. However, for fruit and vegetable products, nonconformance(s) must be addressed with Specialty Crops Inspection/Food Safety and Inspection Service prior to the bid opening date of the solicitation. 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.

(c) Contractors 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.

(d) 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 bid opening date of the IFB. Offerors who submit a bid with a processing plant and/or shipping point that are not in compliance with this requirement will be deemed non-responsive for that processing plant and/or shipping point.

(End of Clause)

4A52.246-3 Manufacturing Practices – Processed Fruit and Vegetable and Poultry Products [as applicable]

(a) Current Good Manufacturing Practices

All processed fruit and vegetables must be produced in accordance with the Food and Drug Administration's Current Good Manufacturing Practices (21 C.F.R., Part 110 and/or Part 117), whichever is applicable at the time of manufacture.

(b) Plant Survey or Plant Systems Audit (PSA)

(1) Successful bidders are required to undergo and pass an annual plant survey or PSA. The primary purpose of a plant survey or PSA is to ensure that products are produced in a clean, sanitary environment and verify that Federal requirements are met. Contractors are required to maintain process operations records that are sufficiently detailed as to allow AMS, Specialty Crop Program, and Specialty Crop Inspection Division (SCID), to determine past and current sanitation practices.

(2) The AMS, Specialty Crop Program, SCID, will conduct the plant surveys/PSA. SCID personnel will follow the procedures found in the most current version of SCID AIM, Sanitation and Safety Manual, or the most current version of SCID AIM, Plant Systems Audit Manual.

(3) Contractors must provide the Contracting Officer with a copy of an acceptable completed plant survey/PSA. An acceptable plant survey/PSA will be valid for one year.

(4) Contractors who have a SCID in-plant contract service agreement will be considered as having met the plant survey/PSA requirement, since a plant survey/PSA is a prerequisite to a contract service agreement. Similarly, Contractors who have completed a SCID plant survey/PSA for any other purpose within one year of award will also be deemed to have satisfied this requirement.

(5) The plant survey/PSA must be completed and approved prior to the bid opening date of the IFB. 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 bid opening date of the IFB. Offerors who submit a bid with a processing plant and/or shipping point that are not in compliance with this requirement will be deemed non-responsive for that processing plant and/or shipping point.

4A52.246-4 FDA Food Facility Registration Number

In accordance with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, domestic facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States are required to register with the FDA, and the Food Safety Modernization Act of 2011 (FSMA) requires additional information for facilities to renew such registrations. If applicable, provide your FDA food facility registration number. FDA guidance is available at:

<https://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/ucm2006831.htm>

4A52.247-1 Loading, Blocking, and Bracing for Multiple Delivery Points (drops) on One Conveyance

When a shipment has multiple delivery points (drops), contractor must load and brace the conveyance for accurate and economical unloading, e.g. load and brace truck trailers in reverse order of delivery.

(End of clause)

4A52.247-2 Special Instruction for Shipments to Puerto Rico

All deliveries to Puerto Rico must cite on the Bill of Lading and Ocean Transportation manifest the applicable Recipient Agency Tax Identification Number (TIN) and Merchant Registration Number. Successful awardee will be responsible for contacting the contracting officer's representative to obtain the appropriate tax identification number.

(End of clause)

4A52.247-3 Bill of Lading Notations (Sept 2019)

Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with the following notations, as appropriate:

1. Shipper Name and Shipment Origin Address
2. USDA Contractor Name, if different than shipper
3. Purchase Order Number and Item Number
4. When provided, Sales Order Number and Item Number.
or Purchase Requisition and Item Number
5. Consignee: Purchase Order Item's Goods Recipient Name
c/o Purchase Order Item's Ship-to Name and Address
6. Number and Type of Units, Net Weight, and Material Description
7. Statement: "For USDA FOOD DISTRIBUTION PROGRAMS"
8. Manufacturer's Lot Code/Lot Identification Number
9. Serial Number(s) of Barrier-Type Seals Applied

Note: When multiple Purchase Order Items are shipped in one conveyance, show the applicable information for each Purchase Order Item.

(End of clause)

4A52.247-70 Delivery Location (Feb 1988)

Shipment of deliverable items, other than reports, shall be to: point(s) of delivery specified in the Government's delivery instructions.

(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.

(h) For frozen products, 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, 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 the rejected loads

(1) Conditions of Container Inspections arrangements are available by accessing the AMS website at:

<https://www.ams.usda.gov/services/sci-contacts>

Please select AMS Federal Inspection Offices at:

<https://www.ams.usda.gov/services/sci-contacts/field-inspection-offices>

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

(End of clause)

4A52.247-2 Additional Shipping Requirements

Items purchased as a result of this solicitation shall not be transported near non-human consumption products, malodorous products or other types of harmful items that could contaminate commodities.

(End of clause)

C.2 – FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (MARCH 2020)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (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) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805note)).

(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:

[Contracting Officer check as appropriate.]

(1) 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).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509)).

(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018) (Pub. L. 109-282) (31 U.S.C. 6101 note).

(5) [Reserved].

(6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

(7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

- (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Oct 2015) (31 U.S.C. 6101note).
- (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).
- (10) [Reserved].
- (11) (i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Mar 2020) (15 U.S.C.657a).
 - (ii) Alternate I (Mar 2020) of 52.219-3.
- (12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Mar 2020) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
 - (ii) Alternate I (Mar 2020) of 52.219-4.
- (13) [Reserved]
- (14) (i) 52.219-6, Notice of Total Small Business Set-Aside (Mar 2020) (15 U.S.C.644).
 - (ii) Alternate I (Mar 2020).
 - (iii) Alternate II (Nov 2011).
- (15) (i) 52.219-7, Notice of Partial Small Business Set-Aside (Mar 2020) (15 U.S.C. 644).
 - (ii) Alternate I (Mar 2020) of 52.219-7.
 - (iii) Alternate II (Mar 2004) of 52.219-7.
- (16) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)).
- (17) (i) 52.219-9, Small Business Subcontracting Plan (Mar 2020) (15 U.S.C. 637(d)(4)).
 - (ii) Alternate I (Nov 2016) of 52.219-9.
 - (iii) Alternate II (Nov 2016) of 52.219-9.
 - (iv) Alternate III (Mar 2020) of 52.219-9.
 - (v) Alternate IV (Aug 2018) of 52.219-9
- (18) 52.219-13, Notice of Set-Aside of Orders (Mar 2020) (15 U.S.C. 644(r)).
- (19) 52.219-14, Limitations on Subcontracting (Mar 2020) (15 U.S.C.637(a)(14)).
- (20) 52.219-16, Liquidated Damages-Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Mar 2020) (15 U.S.C. 657f).
- (22) (i) 52.219-28, Post Award Small Business Program Rerepresentation (Mar 2020) (15 U.S.C. 632(a)(2)).
 - (ii) Alternate I (MAR 2020) of 52.219-28.
- (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Mar 2020) (15 U.S.C. 637(m)).
- (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Mar 2020) (15 U.S.C. 637(m)).
- (25) 52.219-32, Orders Issued Directly Under Small Business Reserves (Mar 2020) (15 U.S.C. 644(r)).
- (26) 52.219-33, Nonmanufacturer Rule (Mar 2020) (15 U.S.C. 637(a)(17)).

- (27) 52.222-3, Convict Labor (June 2003) (E.O.11755).
- (28) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2020) (E.O.13126).
- (29) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (30) (i) 52.222-26, Equal Opportunity (Sept 2016) (E.O.11246).
- (ii) Alternate I (Feb 1999) of 52.222-26.
- (31) (i) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).
- (ii) Alternate I (July 2014) of 52.222-35.
- (32) (i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C.793).
- (ii) Alternate I (July 2014) of 52.222-36.
- (33) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).
- (34) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- (35) (i) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627).
- (ii) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter78 and E.O. 13627).
- (36) 52.222-54, Employment Eligibility Verification (Oct 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)
- (37) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- (38) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).
- (39) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).
- (40) (i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).
- (ii) Alternate I (Oct 2015) of 52.223-13.
- (41) (i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).
- (ii) Alternate I (Jun 2014) of 52.223-14.
- (42) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
- (43) (i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).
- (ii) Alternate I (Jun 2014) of 52.223-16.
- (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).
- (45) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).
- (46) 52.223-21, Foams (Jun 2016) (E.O. 13693).
- (47) (i) 52.224-3 Privacy Training (Jan 2017) (5 U.S.C. 552 a).
- (ii) Alternate I (Jan 2017) of 52.224-3.

- ___ (48) 52.225-1, Buy American-Supplies (May 2014) (41 U.S.C. chapter 83).
- ___ (49) (i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (May 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).
- ___ (ii) Alternate I (May 2014) of 52.225-3.
- ___ (iii) Alternate II (May 2014) of 52.225-3.
- ___ (iv) Alternate III (May 2014) of 52.225-3.
- ___ (50) 52.225-5, Trade Agreements (Oct 2019) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- ___ (51) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- ___ (52) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- ___ (53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- ___ (54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- ___ (55) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C.4505, 10 U.S.C.2307(f)).
- ___ (56) 52.232-30, Installment Payments for Commercial Items (Jan 2017) (41 U.S.C.4505, 10 U.S.C.2307(f)).
- X (57) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct 2018) (31 U.S.C. 3332).
- ___ (58) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) (31 U.S.C.3332).
- ___ (59) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C.3332).
- ___ (60) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
- ___ (61) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) (15 U.S.C. 637(d)(13)).
- X (62) (i) 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).
- ___ (ii) Alternate I (Apr 2003) of 52.247-64.
- ___ (iii) Alternate II (Feb 2006) of 52.247-64.

(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:

[Contracting Officer check as appropriate.]

- ___ (1) 52.222-17, Nondisplacement of Qualified Workers (May 2014)(E.O. 13495).
- ___ (2) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

___ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

___ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

___ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

___ (6) 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).

___ (7) 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).

___ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).

___ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).

___ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792).

(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, of 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 clause-

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (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 \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.

(vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(viii) 52.222-26, Equal Opportunity (Sept 2015) (E.O.11246).

(ix) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C.4212).

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

(xi) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C.4212)

(xii) 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.

(xiii) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

(xiv) (A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O 13627).

(B) Alternate I (Mar 2015) of 52.222-50(22 U.S.C. chapter 78and E.O 13627).

(xv) 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).

(xvi) 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).

(xvii) 52.222-54, Employment Eligibility Verification (Oct 2015) (E.O. 12989).

(xviii) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).

(xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).

(xx) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).

(B) Alternate I (Jan 2017) of 52.224-3.

(xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xxii) 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.

(xxiii) 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.

(End of clause)

C.3 – FAR 52.216-4 Economic Price Adjustment-Labor and Material (Jan 2017)

(a) The Contractor shall notify the Contracting Officer if, prior to award of an incentive period, the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under paragraph (c)(3) of this clause. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for-

(i) Supplies or services for which the production cost is not affected by such changes;

(ii) Changes in rates or unit prices other than those shown in the Schedule; or

(iii) Changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in [subpart 4.7](#) of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of Clause)

C.4 – 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 or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from date of award through 12-months after award.

(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)

C.5 – 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 the amount indicated on the contractor's half month delivery period constraints schedule;

(2) Any order for a combination of items in excess of the amount indicated on the contractor's half month delivery period constraints schedule; or

(3) A series of orders from the same ordering office within 15 days that together call for quantities exceeding the limitation in paragraph (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 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.

(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.

Note: All delivery orders will be in full-truckload quantities. Some truckloads may require one to three stops.

(End of Clause)

C.6 – 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.

(End of Clause)

C.7 – 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 45 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 45 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 45 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) 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.
- 5) 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.

Christine Gouger
USDA-AMS-Commodity Procurement
Procurement Policy and Service Contracting Division
PO Box 419205, Mailstop 8698
Kansas City, MO 64141-6205

Phone: 816.926.3379

Email: Christine.gouger@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.

C.7 – AGAR 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 Vendor's Minimum Contract Amount upon award* but not in excess of *the amount shown in the Vendor's Maximum Contract Amount upon award*.

(End of Clause)

C.8 – LEGAL HOLIDAYS

(a) The Federal Government observes the following days as holidays.

New Year's Day	January 1 st *
Martin Luther King's Birthday	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4 th *
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans' Day	November 11 th
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25 th *

*If the date falls on a Saturday, the Government holiday is the preceding Friday. If the date falls on a Sunday, the Government holiday is the following Monday.

(b) In addition to the days designated above as holidays, the Government may observe additional days in accordance with 5 USC 6103.

C.9 – AWARD TERM

In addition to the period of performance stated in paragraph C.5 below, the Contractor may earn extensions (hereinafter called "award terms") up to four additional years based upon the quality of performance during the specified period of performance.

Further, the contract period of performance may be reduced to not less than 1 year on the basis of performance.

The Contractor's performance will be evaluated using timely delivery and recipient commodity complaints entered into the Web Based Supply Chain Management system. The contract may end at the base period if the government determines that the contractor's performance does not reflect a level of performance as described in the award-term plan.

The contract will be unilaterally modified to reflect the award term extension or reduction.

(End of clause)

C.10 – PERIOD OF PERFORMANCE

The total period of performance shall not exceed 60 months. The periods of performance are defined as follows:

Base Period: Date of award through 12-months
Incentive Period 1: 12-months after Base Period
Incentive Period 2: 12-months after Incentive Period 1
Incentive Period 3: 12-months after Incentive Period 2
Incentive Period 4: 12-months after Incentive Period 3

[End of text]

C.10 – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR

In accordance with FAR 15.204-1(b), the completed and submitted "Representations, Certifications, and Other Statements of Offeror", are incorporated by reference in this contract.

D. DOCUMENTS, EXHIBITS OR ATTACHMENTS

D.1 ATTACHMENTS

- A—Estimated Monthly Maximums
- B – Commodity Specification for Canned Fruit dated March 2020
- C – Past Performance Reference Information
- D – Award Term Plan

E. SOLICITATION PROVISIONS AND INSTRUCTIONS TO OFFEROR(S)

E.1 FAR 52.252-1 SOLICITATION PROVISIONS 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 <http://www.acquisition.gov>.

[End of Provision]

E.2 FAR 52.216-1 TYPE OF CONTRACT (APR 1984)

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

(End of Provision)

E.3 COMMUNICATIONS REGARDING THIS SOLICITATION

Any questions or comments regarding this solicitation shall be submitted through email to Valerie.Dinkel@usda.gov by Tuesday, May 12, 2020, at 5:00 PM ET.

A conference call discussing this RFP will be held on Wednesday, May 13, 2020, at 1:00 PM CT. Join ZoomGov Meeting at:

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.zoomgov.com%2Fj%2F1616281738&data=02%7C01%7C%7C9ebaaa0476c3427014ff08d7f5c522f6%7Ced5b36e701ee4ebc867ee03cfa0d4697%7C0%7C0%7C637248099347016858&sdata=oU6Wi32f704NSsI5HP5PRm3mZzZEcOdSdMbkY384NU4%3D&reserved=0>

Meeting ID: 161 628 1738

Dial by your location

+1 669 254 5252 US (West Coast)

+1 646 828 7666 US (East Coast)

Written proposals are due no later than Wednesday, May 20, 2020, at 1:00 PM CT, via WBSCM.

Awards will be announced no later than Friday, June 12, 2020

E.4 ADDITIONAL INSTRUCTIONS FOR OFFERORS

Offerors shall submit a proposal through WBSCM for receipt no later than the date and time specified on the SF-1449. Only those offers received by this date and time will be considered for award.

FORMATTING

Page size 8.5 by 11 inches with 1-inch margins. Paragraphs single spaced. Minimum font size/style 12-point Times New Roman font. Maximum of 2 pages (including a transmittal/cover letter), single sided. Offer must be signed and submitted as a PDF document on company letterhead. If the offeror uses a different format (font size, margin, etc.), the government reserves the right to adjust the proposal to fit the parameters of the format as stated in the RFP, and if this results in the proposal exceeding the page limitations in any one area, the government will not consider those excess pages.

E.5 FAR 52.212-2 EVALUATION-COMMERCIAL ITEMS (OCT 2014)

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

1. Past-performance

Quotes will be evaluated based on the offeror's past performance as provided by the offeror. Vendor is to submit information on one (1) contract that demonstrate the company has provided work of similar size, scope and complexity, and the quality of its service.

In addition, the Government may consider relevant past performance on any existing USDA contract.

2. Technical Approach

The support of American Agriculture is an important facet of USDAs commodity programs. As such, the offeror should address how their participation supports the mission of the USDA commodity programs and facilitating agricultural markets. In addition, the offeror must address its commitment to flexibility with the needs of recipients relating to changes in delivery destinations and additional quantities above the guaranteed minimum for all materials.

3. Price

Technical and past performance, when combined, are equal to price.

(b) *Option.* The Government will evaluate offers for award purposes when 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 offeror'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.

(End of clause)

Basis for award

The Government may make award without discussions; therefore, the offeror's initial offer should contain the best pricing. Award will be based on best value using 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.

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.

The following adjectival ratings will be used to evaluate the offeror's Technical Approach.

Technical	
Outstanding	Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. The proposal contains multiple strengths and no deficiencies.
Good	Proposal meets requirements and indicates a thorough approach and understanding of the requirement. Proposal contains at least one strength and no deficiencies.
Acceptable	Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Proposal has no strengths or deficiencies
Marginal	Proposal does not clearly meet the requirements and has not demonstrated an adequate approach and understanding of the requirement.

Attachment A

**Estimated Monthly Maximums
in Pounds**

	Material											
	100211	100212	111253*	100218	100219	100220	111244*	111245*	100223	100224	100225	100226
Jan	1,239,300	2,401,695		972,000	1,785,411	2,510,451			1,175,513	873,582	2,422,614	48,032
Feb	1,767,825	897,237		1,439,775	425,961	879,111			1,002,375	198,132	747,498	36,024
Mar	935,550	193,344		4,531,950	132,924	277,932			874,800	162,108	240,160	
Apr	2,250,788	5,437,800		2,387,475	3,326,121	7,262,484			1,997,460	2,917,944	4,056,302	180,120
May	4,216,050	10,331,820		3,924,450	4,531,500	7,129,560			1,385,100	4,058,704	4,380,518	648,432
Jun	1,312,200	3,975,636		1,591,650	2,610,144	3,021,000			765,450	1,633,088	2,082,061	120,080
Jul	3,268,350	3,878,964		13,522,950	2,005,944	3,758,124			1,166,400	2,569,712	2,503,668	324,216
Aug	72,900	1,051,308		145,800					1,293,975			
Sept				656,100					8,128,350			
Oct												
Nov	1,676,700	3,842,712		1,154,250	2,598,060	4,036,056			923,400	1,452,968	3,650,432	108,072
Dec	1,154,250	3,395,604		1,543,050	2,018,028	3,081,420			899,100	1,260,840	2,725,816	72,048

*Materials 111253, 111244 and 111245 are new with no historical data.

This information is included for informational and planning purposes only and is not purchased by this contract. Offerors will submit pricing in WBSCM for each State for each material the offeror is interested in providing. All information listed in identified as pounds.

Solicitation #: 2000006983/12-3J14-20-R-0433

Attachment B

Commodity Specification for Canned Fruit dated March 2020

Attachment C

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: _____

Attachment D

Award Term Plan

Requirement	Acceptable Quality Levels	Method of Surveillance
Deliveries are made within the contracted delivery period	95%	File reviews, WBSCM reporting, customer complaints, inspections
Products meet all specification requirements for quality.	95%	Quality complaints received by recipients, inspections