

Effective Date: **April 2015**

**AGRICULTURAL MARKETING SERVICE
MASTER SOLICITATION
FOR COMMODITY PROCUREMENTS**

For Distribution to Eligible Outlets



TABLE OF CONTENTS

<u>SECTION</u>	<u>Page</u>
I. INSTRUCTIONS TO BIDDERS.....	1
II. SUBMISSION OF OFFERS.....	4
III. CONTRACT/PURCHASE ORDER AWARD.....	7
IV. INCORPORATED TEXT AND ORDER OF PRECEDENCE.....	7
V. CONTRACT COMPLIANCE	8
VI. SHIPMENT AND DELIVERY	8
VII. LIABILITY FOR LOSSES DUE TO DETERIORATION, SPOILAGE, OR RECALL.....	11
VIII. FAILURE OF THE COMMODITY TO MEET CONTRACT REQUIREMENTS AND SPECIFICATIONS/SUPPLEMENTS	12
IX. INVOICES AND PAYMENT PROCESS	12
X. FAR/AGAR PROVISIONS INCORPORATED BY REFERENCE.....	14
52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)	14
<u>FAR PROVISIONS</u>	
52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (DEC 2014).....	15
52.214-14 PLACE OF PERFORMANCE-SEALED BIDDING (APR 1985).....	16
52.216-1 TYPE OF CONTRACT (APR 1984)	16
52.233-2 SERVICE OF PROTEST (SEPT 2006)	16
52.247-48 F.O.B. DESTINATION-EVIDENCE OF SHIPMENT (FEB 1999).....	16
52.252-3 ALTERATIONS IN SOLICITATION (APR 1984).....	17
<u>AGAR PROVISIONS</u>	
452.209-70 REPRESENTATION BY CORPORATION REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION (MAR 2012).....	18
XI. FAR/AGAR CLAUSES INCORPORATED BY REFERENCE.....	18
52.-252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)	18

FAR CLAUSES

52.209-1 QUALIFICATION REQUIREMENTS (FEB 1995).....20
52.211-11 LIQUIDATED DAMAGES-SUPPLIERS, SERVICES OR RESEARCH
AND DEVELOPMENT (SEPT 2000)22
52.232-40 PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS
SUBCONTRACTING (DEC 2013)22

AGAR CLAUSES

452.209-71 ASSURANCE REGARDING FELONY CONVICTION TAX DELINQUENT
STATUS FOR CORPORATE APPLICANTS (MAR 2012).....22
452.211-74 PERIOD OF PERPORMANCE (FEB 1988)23
452.246-70 INSPECTION AND ACCEPTANCE – ALTERNATE I (FEB 1988)23

XII. INQUIRIES23
EXHIBIT 1 - DOMESTIC ORIGIN CERTIFICATION
EXHIBIT 2 - WBSCM BROWSER REQUIREMENTS

This solicitation, called the Master Solicitation for Commodity Procurements (Master Solicitation), is used by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), to solicit bids and award contracts for various commodities for the National School Lunch Program and other Federal Food and Nutrition Programs. The Master Solicitation will provide general guidance to potential bidders and/or offerors.

I. INSTRUCTIONS TO BIDDERS

A. USDA will periodically issue Solicitations under this Master Solicitation for various commodities under domestic food nutrition assistance programs. Specifications and program requirements are further defined in the appropriate commodity specification and/or supplement and are incorporated herein and made a part hereof for specific requirements. The Master Solicitation is updated as necessary to incorporate changes in the Federal Acquisition Regulation (FAR), Agricultural Acquisition Regulations (AGAR), and AMS policies and procedures. The date at the top of the Master Solicitation document governs which version of the Master Solicitation is applicable to particular Solicitation/Invitations for Bids (IFB).

B. Awards will be made following the principles in the FAR and AGAR. The IFB will specify the commodity; the bid date; the delivery period; the destinations; estimated quantities; the closing time for receipt of bids; acceptance date, and any provisions, terms, and conditions applicable to the proposed procurement which are in addition to or different from those contained in the Master Solicitation. The full texts of the applicable FAR provisions and clauses incorporated into the contract can be found at <https://www.acquisition.gov/far/index.html>.

C. Offerors are cautioned to carefully read this Master Solicitation, the applicable IFB, and the applicable Commodity Specification and/or Supplement. Failure to do so will be at the offeror's risk. These documents are incorporated into the contract. Offerors are cautioned that statements made by person other than the Contracting Officer are not binding on the Government unless confirmed in writing by the Contracting Officer.

D. Offer prices will be either f.o.b. (or f.a.s. vessel) at the destinations listed in the applicable IFB or on a shipping point basis. If f.o.b. destination, bids will be invited on a purchase unit basis or multiples thereof, except that from time to time the IFB will indicate two or more destinations in a line item which will require a split delivery (drop) at each destination. Delivery by either trucks or railcars is at the option of the Contractor except for those destinations which specify the method of delivery. If f.o.b. origin, delivery of the commodity will be made either f.o.b. railroad cars or trucks or in-store at USDA's option, at the shipping points named in the IFB. To submit bids, a company must be on the Qualified Bidders List. For information regarding how to become a qualified bidder, visit <http://www.ams.usda.gov/commoditypurchasing>, or contact the Contracting Officer.

E. System for Award Management (SAM)

Prospective Contractor shall be registered in the SAM database prior to award of a contract as prescribed under FAR Parts 4.1102 and 4.1103. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in the SAM database to ensure that it is current, accurate and complete. The SAM database can be accessed at <https://www.sam.gov>.

F. Domestic Products

All products used in fulfilling contracts or purchase orders awarded must be of 100 percent domestic origin, meaning that they are produced and processed from products, including maltodextrin (products), which were grown, raised, harvested, produced, processed, and stored only in the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as “the United States”). If the Contractor processes or handles products originating from sources other than the United States, the Contractor must have an acceptable identification and segregation plan for those products to ensure they are not used in commodities purchased under this Master Solicitation. 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.

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.

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.

G. Food Defense Requirements

Current and potential Contractor(s) and subcontractor(s) shall have an approved food defense plan in place that provides for the security of a plant’s production processes and includes the storage and transportation of pre-production raw materials and other ingredients and post-production finished product. The plan shall address the following areas, as applicable: (1) food security plan management; (2) outside and inside security of the production and storage facilities; (3) slaughter and processing, including all raw material sources; (4) shipping and receiving; (5) storage; (6) water and ice supply; (7) mail handling; (8) personnel security; and (9) transportation, shipping, and receiving (includes the sealing of any transport conveyance for truck lot and less-than-truck lot quantities of finished product).

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

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. 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.

H. Manufacturing Practices – Processed Fruit and Vegetable and Poultry Products

1. 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).

2. Plant Survey or Plant Systems Audit (PSA)

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, Fruit and Vegetable Programs, Specialty Crop Inspection Division (SCID), to determine past and current sanitation practices.

The AMS, Fruit and Vegetable 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. 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.

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.

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.

I. Loading and Sealing of Vehicles

Loading must be in accordance with good commercial practices and the sealing must be done at origin under the supervision of a USDA, AMS certification agent or if applicable by a person authorized by the company to act on its behalf. Thereafter, all delivery units—truck lot and less-than-truck lot (LTL) quantities—must be secured at all times prior to unloading with tamper-resistant, serially numbered, high-security seals. Suppliers of commodities, products and/or services shall be responsible for placing seal(s) on all doors of each transportation conveyance

upon completion of loading or servicing. Seals shall be serially numbered, barrier-type and meet the American Society for Testing and Materials (ASTM) standards (F-1157-04) and/or the International Organization for Standards (ISO) 17712-2010. Seals shall be 1/8th inch diameter cable, high-security bolt, or equivalent. The Contractor must maintain a record of each seal number used per truck lot and LTL delivery unit. Additionally, the Contractor must ensure that the applicable seal identification number is on each bill of lading, shipment manifest, certificate, or delivery documents for each delivery destination.

When LTL delivery units are transported on the same trailer and destined for multiple recipients, the trailer must be sealed after each delivery. The seal number must be recorded on the appropriate delivery documents and correspond with the applied seal at the time of arrival at the next destination. It will be the responsibility of the Contractor to provide a sufficient number of seals to the carrier service and to ensure that the trailer is sealed after each delivery destination. Failure to seal the trailer after each stop may result in rejection of the shipment by the recipient agency at the next scheduled stop and rejection of any subsequent deliveries on the trailer.

1. Railcar. Each railcar must be sealed. The Contractor is responsible for arranging for railcar deliveries of more than one delivery unit so that each delivery unit contained in the same railcar can be completely separated and sealed.
2. Truck or Piggyback. Truck or piggyback shipments must be sealed at origin. A delivery unit shipped by truck or piggyback which includes split deliveries to multiple destinations will require sealing after each drop in accordance with Section I.I of this Master Solicitation.

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

II. SUBMISSION OF OFFERS

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

1. WBSCM Registration. Potential new suppliers must complete a WBSCM vendor registration form and meet all financial requirements prior to being entered into WBSCM. In addition, the firm must meet all technical requirements for producing the product prior to being able to submit offers in WBSCM. Refer to the “Qualification Requirements for Prospective Contractors Selling to the USDA” instruction and additional information for new vendors located on the AMS website at <http://www.ams.usda.gov/commoditypurchasing>. A new supplier must designate an individual who will serve as the Corporate Vendor Administrator and an individual who is authorized to submit offers for the company. Once approved, USDA will assign the roles in WBSCM and the vendor will be able to submit offers for those materials (commodities) they are qualified to supply. In the event a vendor submits offers for materials they are not qualified to bid, the Contracting Officer will rule those offers as non-responsive and the offers will not be considered for those materials.

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

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

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

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

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

AMS will not be responsible for any failure attributed to the transmission of the bid data prior to being accepted and stored in WBSCM including, but not limited to the following:

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

Offerors are advised to allow sufficient time to input offers on the date of bid opening due to high volume of internet traffic.

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

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

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

1. Offer is made subject to the Master Solicitation; the applicable Supplement and/or Specification(s); the Solicitation; and FAR/AGAR.
2. Timely Performance Certification. All products required under any existing USDA contract(s)/purchase order(s) or subcontract(s) with a not-later-than delivery date prior to this bid opening _____. Choose one:

- (a) Have been delivered.
 - (b) Have not been delivered.
 - (c) Have not been delivered, but the Offeror has notified the Contracting Officer.
 - (d) There are no existing contracts.
3. Offeror requests HUBZone small business price evaluation preference (YES) (NO). Applies only to firms certified in the Small Business Administration's Historically Underutilized Business Zone program (FAR subpart 19.13).
 4. Furnish name, title, phone number and e-mail address of person submitting this bid (must be an officer of the company or a person authorized to execute contracts on behalf of the bidder).

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

B. Past Performance

The offeror must certify to timely performance on current contracts and subcontracts in the attribute questions of the IFB. The offeror shall notify the Contracting Officer of late deliveries prior to submission of bids. The Contracting Officer will determine if late performance is beyond the control or negligence of the offeror prior to the bid closing date of the IFB. The Contracting Officer may also deem the offeror non-responsible and/or ineligible to participate in an IFB if the offeror or any of their affiliates or subcontractors is delivering late and the late deliveries are not due to causes beyond the offeror's control or negligence. Past performance will be evaluated for Contractor's performance for the last six (6) months prior to bid opening of the IFB. See Section VI.F as to the importance of timely delivery and the difficulty inherent in quantifying actual damages for delay in delivery.

Bidders are cautioned NOT to BID on quantities in excess of what they can reasonably expect to timely deliver in accordance with the contract. Deliveries must be made during the contracted delivery period, and no extensions will be granted due to weekends or Federal holidays.

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

C. Constraints

AMS does not allow offerors to enter minimum constraints, but allows entering maximum constraints. AMS may award any volume up to the maximum constraints submitted by the offeror. Any minimums submitted will not be accepted.

D. The HUBZone Program

The Government will award contracts to eligible HUBZone small business concerns in accordance with FAR Subpart 19.13, except for price evaluation preference mandated by the provisions of 15 U.S.C. 657a, as follows:

In any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be—

- (i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation;
- (ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and
- (iii) 0 for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

In accordance with the provision of 15 U.S.C. 632, in the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, none of the commodity being procured will be obtained by the prime contractor through a subcontract for the purchase of the commodity in substantially the final form in which it is to be supplied to the Government.

E. The 8(a) Program

For the purposes of contracts made under the 8(a) Program, FAR 19.8, reference to “Contractor,” in all USDA contract or purchase order documents, means the 8(a) firm. In accordance with the Interagency Agreement as authorized under FAR 19.800(c), the Small Business Administration (SBA) has delegated responsibility to USDA for the administration of contracts or purchase orders awarded to 8(a) firms with complete authority to take any action on behalf of the Government under the terms and conditions of the contract. All 8(a) contractors must be on the Qualified Bidders List.

III. CONTRACT/PURCHASE ORDER AWARD

Firm-fixed-price contracts/purchase orders will be awarded to the responsible bidder(s) whose bid conforms to the Solicitation/IFB, Master Solicitation, and applicable Commodity Specification and/or Supplement, that are most advantageous to the Government considering only price and the price-related factors (inspection, freight or transportation costs, etc.) included in the IFB. Award(s) documents will be available on the Vendor’s Supplier Self-Service Page in WBSCM by the date specified in the Solicitation. A notice of award will be issued in the form of a Purchase Commodity Award (PCA) Report or other public notice posted at the Department’s Office of Public Affairs, News Division, on the day or prior to the acceptance date. After award, inquiries may be made to the Contracting Officer.

Award(s), as specified above, will result in a binding contract/purchase order without further action by either party. Information on awards is also available electronically through the commodity procurement website at <http://www.ams.usda.gov> under the “Commodity Purchasing” link after award and the PCA report posted on the WBSCM Public Procurement Page.

IV. INCORPORATED TEXT AND ORDER OF PRECEDENCE

The contract will incorporate this Master Solicitation including: the applicable IFB; the applicable Commodity Specification and/or Supplement; the Contractor's offer; and the Purchase Order. If the contract documents are inconsistent or contradictory, the following order of precedence will prevail: IFB, Master Solicitation, and Commodity Specifications and/or Supplement(s).

V. CONTRACT COMPLIANCE

The Contractor must assure compliance with all requirements of this Master Solicitation and the applicable Commodity Specification and/or Supplement prior to submission of product to USDA for acceptance. Examination and certification by USDA is solely for the benefit of USDA and will not relieve the Contractor of its obligation and responsibility to deliver a product which complies with all the requirements of this Master Solicitation and the applicable Commodity Specification and/or Supplement. USDA approval of any part of the production process, including but not limited to equipment, will not relieve the Contractor of the responsibility for performing in accordance with the contract.

VI. SHIPMENT AND DELIVERY

Shipment and delivery must be made in accordance with this Master Solicitation; the applicable Commodity Specification and/or Supplement; the applicable IFB; and Purchase Order. The Contractor must complete the Advance Ship Notification (ASN) in WBSCM prior to delivery of the product to the awarded destination. Contractors are encouraged to create the ASN for the purchase order item number as soon as a delivery appointment has been scheduled, but not less than 24 hours. The Contractor must provide accurate information when creating the ASN. The ASN provides an alert to the appropriate recipient agency that the product will be shipped for a sales order.

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

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

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

When making deliveries to more than one destination from the same railcar, the quantities required at each stop off must be placed in separate compartments under seal. Each railcar compartment must be stacked in a manner that will preclude containers shifting while in transit.

A. Change in Place or Manner of Delivery

1. F.O.B. Origin

If the commodity offer price is on the basis of delivery f.o.b. cars or trucks at origin and the Contractor requests a change in the shipping point named in the contract and such request is approved by USDA, any additional cost of transportation and related services shall be deducted from payments otherwise due the Contractor and any savings shall accrue to USDA. For f.o.b. origin prices, the Government will add the cost of transportation to the offer price in evaluation and award.

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

If the commodity offer price is on the basis of delivery f.o.b. cars or trucks at destination or f.a.s. vessel at designated ports and if USDA orders delivery of the commodity in a manner or to destinations other than those stated in the contract, any additional cost of transportation and related services shall be for the account of USDA and any savings will accrue to USDA. When a place of delivery is changed by USDA, the contract price shall be adjusted for any resulting increase or decrease in the cost of performance in accordance with best available information as determined by USDA. No adjustment shall be made for changes in transportation costs when commodities are identically priced for delivery regionally or nationally and the place of delivery is changed within the area to which the identical price applies. In all other cases, price adjustments due to changes in transportation costs shall be determined by USDA prior to shipment. If USDA orders delivery to a destination other than the original destination named in the contract, transportation costs adjustments will be made by the AMS Commodity Procurement Staff.

B. Checkloading

a. The Contractor shall not load the commodity for shipment or transfer the commodity in store unless, at the time of such loading or transferring, the commodity is checkloaded by USDA or by a person of the inspection or grading service designated by USDA. The Contractor is responsible for giving notice in sufficient time for a USDA agent to be present. The cost of checkloading shall be for the account of the Contractor. Checkloading refers to identifying the commodity which was previously inspected and found to meet contract requirements, examining the commodity at the time of loading or transferring for condition of containers and for compliance with labeling and container marking requirements, and determining the number of containers per car, truck, or lot.

b. Checkloading by persons licensed or authorized by USDA shall not relieve the Contractor of the obligation to affect a delivery of the commodity meeting contract requirements or constitute a waiver of any of USDA's rights under the contract. The certificates issued as a result of such official checkloading shall be only prima facie evidence of the number and condition of containers.

c. The Contractor shall be liable for all shortages which occur before delivery, except that if shipment is by common carrier, the Contractor shall not be liable for a shortage reported at destination unless it can be established, notwithstanding the checkloading certificate, that there was an actual shortage at the time of loading for shipment.

d. This paragraph (d) is not applicable to purchases delivered f.o.b. origin. If the shipment is by truck and USDA specifically requests "Exclusive Use of Vehicle," USDA will reimburse the Contractor for any additional transportation costs due to shipment under "Exclusive Use of Vehicle." The sealing of trucks as part of the checkloading procedure shall not be construed as such a request. In the absence of such a request by USDA, any additional cost of transportation and related services due to shipment under "Exclusive Use of Vehicle" shall be for the Contractor's account. The Contractor shall be responsible for making such arrangements as may be necessary to prevent the application of "Exclusive Use of Vehicle" charges when such charges result in higher transportation costs. The arrangements to be made by the Contractor may include an instruction to the checkloader not to seal the truck when the sealing will result in "Exclusive Use of Vehicle" charges. If, notwithstanding such arrangements, the checkloader seals the truck, the Contractor shall have the responsibility for removing the seals.

C. Obliteration of Markings

The appearance in commercial or other channels of containers and container materials bearing markings required under the contract may cause USDA expense in determining whether commodities have been diverted from authorized use and in answering inquiries. The Contractor agrees to take necessary action to prevent the appearance in commercial or other channels of any labels, bags, cans, can lids, cases, or any other type of packaging, either filled or unfilled (hereinafter referred to as "containers and container materials"), bearing markings required under the contract, including those held by the Contractor or others, e.g., overruns. The following actions with respect to all inner and outer containers and container materials will constitute compliance with the intent of this clause: (a) complete obliteration of all markings required under the contract with a permanent opaque paint, or removal of labels which bear such markings, and overlaying or replacing markings so obliterated or removed with commercial labeling; (b) placing a transparent pressure-sensitive sticker on all containers and container materials bearing USDA markings, which shall state in lettering of a prominent size "SALVAGE BY (insert firm's name)" directly on the "NOT TO BE SOLD OR EXCHANGED" legend wherever it appears on the containers and container materials; (c) drawing one or more x's completely through the markings and with a permanent stamp conspicuously placing thereon the following legend: "This container has not been used and shall not be used for shipment of Government commodities."; or (d) any other actions, approved by the Contracting Officer, which accomplish the intent of the foregoing.

D. Early Delivery

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

E. Compensation for Delays in Delivery

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

If a Contractor determines that it will not be able to deliver the commodity by the Not-Later-Than (NLT) delivery date, the Contractor shall notify the Contracting Officer immediately. If the reason for not meeting the NLT delivery date is beyond the control or negligence of the Contractor, the Contractor is required to submit a waiver request within 2 working days after the scheduled NLT delivery date. Failure to submit a waiver request within the time specified will

result in liquidated damages being assessed. Waiver requests submitted after the time specified will not be accepted. See Section XII.A, FAR Clause 52.211-11, of the Master Solicitation for liquidated damages.

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

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

F. Tolerances

Tolerances will be set forth in the appropriate commodity specification or supplement.

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

A. Loss Due to Deterioration or Spoilage

The Contractor shall reimburse USDA for all losses due to deterioration or spoilage sustained by USDA for which the Contractor is responsible, but only if such losses are discovered within a reasonable time, as determined by USDA, after delivery. The Contractor agrees to reimburse USDA for such losses within 10 days after date of billing by USDA. That part of the commodity as to which USDA makes a claim based on deterioration or spoilage shall be held by USDA subject to disposition instructions of the Contractor (unless the nature of the deterioration or spoilage is such as to require condemnation and destruction as determined by USDA or its authorized representative) but need not be held by USDA in excess of 30 days after USDA sends notice of such claim to the Contractor. In lieu of reimbursing USDA, the Contractor may replace the deteriorated or spoiled commodity with an equal quantity of commodity which conforms to all contract requirements and specifications, if such replacement is agreed to by USDA.

B. Loss Due to Product Recalled for Health or Safety Risk

The Contractor shall be held liable for failure to meet all contract requirements. 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.

VIII. FAILURE OF THE COMMODITY TO MEET CONTRACT REQUIREMENTS AND SPECIFICATIONS/SUPPLEMENTS

(a) Contractor shall be liable for failure of the commodity to meet all of the contract requirements and specifications/supplements, including those with respect to packages and containers.

(b) If Agency discovers on or after delivery that all or any part of the commodity (including packages and containers) did not meet contract requirements and specifications at time of delivery, Agency shall have the right:

(1) to accept or retain the entire quantity and hold Contractor liable for the damages sustained, as determined by Agency, or

(2) to reject the entire quantity or to reject a portion thereof and accept or retain the remainder. Agency may at its discretion terminate the contract with respect to the quantity rejected or permit Contractor to replace all or part of the quantity rejected with a quantity of the commodity that does conform to all contract requirements and specifications/supplements and, in either circumstance, hold Contractor liable for damages sustained, as determined by Agency. To “reject” means to refuse to accept on delivery or, after delivery and acceptance, to notify Contractor of revocation of the acceptance, in whole or in part. In either event, Contractor shall be held liable for all damages sustained as determined by Agency.

(c) Any quantity rejected may be returned to the Contractor, destroyed (if unfit for human consumption), or disposed of for the account of Contractor in accordance with applicable health and sanitation laws and regulations. Any rejection of a quantity of the commodity delivered by common carrier shall be made by the office of Agency which issued the purchase order. Consignee may inform the carrier or Contractor of rejection of a quantity of the commodity delivered by contract carrier or by Contractor’s own trucks. Contractor will be advised of Agency’s election under (b) (2) of this provision either at the time of rejection or within a reasonable time thereafter.

IX. INVOICES AND PAYMENT PROCESS

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

- 1) The official inspection and checkloading certificate(s), if applicable;
- 2) The certificate of conformance, if applicable;
- 3) The signed bill of lading (BOL) or other commercial receipt signed by recipient agency evidencing delivery date and quantity of product delivered, or destination USDA inspection certificate or report evidencing delivery of product (Optional);
- 4) Other required documents identified in the applicable Commodity Supplement and/or Specification;
- 5) Authorization letter from the Contracting Officer for reimbursement of extra cost, if applicable; and
- 6) Any waivers granted by the Contracting Officer, if applicable.

Any requests for transportation and protective service charges must be submitted to the Contracting Officer for approval prior to invoicing. The invoices for reimbursement of transportation and protective service charges, if any, must be supported by the original or a copy of carrier's receipted freight bill or invoice. If shipment is by contract carrier, the Contractor's invoice must also be supported by a copy of the contract between the Contractor and the truck or rail line showing the schedule of rates, or a copy of the truck or rail line's published rates.

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

Submission of an invoice when all contract terms and conditions have not been satisfied may subject the Contractor to civil and criminal penalties as provided in Titles 15, 18, and 31 of the United States Code. The USDA will make payment to the Contractor of any amounts due with respect to each delivery invoiced.

In order for the Contractor to receive payment on an invoice, the following four action items must be completed:

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

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

If the items delivered are:	Payment must be made as close as possible to but not later than:
<i>Meat or meat food products.</i> As defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Public Law 98-181, including any edible fresh or frozen poultry meat, and perishable poultry meat food product, fresh eggs, and any perishable egg product.	7 th day after product delivery.
<i>Fresh or frozen fish.</i> As defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)).	7 th day after product delivery.
<i>Perishable agricultural commodities.</i> As defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)). (This includes frozen fruit and vegetable products).	10 th day after product delivery, unless another day is specified in the contract.
<i>All other processed canned commodities (including fruits, vegetables, fish, and poultry products).</i>	30 th day after product delivery

For the purpose of payment, the date of delivery of each shipment of product will be the date of receipt in WBSCM of a properly documented invoice package and the Goods Receipt (GR) entered by recipient agency. If the GR was not entered, payment will be based on the signed BOL submitted with the invoice. If the GR was not entered and no signed BOL was submitted with the invoice, the invoice will be rejected.

In addition to the submission of the invoice package with supporting documents identified within this section, the following actions must be completed in WBSCM before payment will be made. These actions will be dependent on what material (commodity) type is being procured. Please refer the appropriate commodity supplement or specification for type of match needed.

- 1. Four way match – PO, Inspection Plan, GR, and Invoice with supporting documentation attached, or**
- 2. Three way match – PO, GR, and Invoice with supporting documentation attached.**

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

X. FAR/AGAR PROVISIONS INCORPORATED BY REFERENCE

52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This Master Solicitation incorporates one or more solicitation provisions 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. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its offer. The full text of a solicitation provision may be accessed electronically at: <http://www.acquisition.gov/>.

48 CFR - FAR Provision Reference Number	Description	Date (Month/Year)
52.204-7	System for Award Management	JUL 2013
52.214-3	Amendments to Invitation for Bids	DEC 1989
52.214-4	False Statements in Bid	APR 1984
52.214-5	Submission of Bids	MAR 1997
52.214-6	Explanation to Prospective Bidders	APR 1984
52.214-7	Late Submissions, Modifications, and Withdrawals of Bids	NOV 1999
52.214-10	Contract Award–Sealed Bidding	JUL 1990
52.214-15	Period for Acceptance of Bids	APR 1984
52.214-20	Bid Samples	APR 2002
52.214-21	Descriptive Literature	APR 2002
52.214-22	Evaluation of Bids for Multiple Awards	MAR 1990

48 CFR – AGAR Provision Reference Number	Description	Date (Month/Year)
452.214-70	Award by Lot	NOV 1996

A. FAR Provisions

52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)

(1) The North American Industry Classification System (NAICS) codes and small business size standards for the acquisition of the commodities or products are as follows:

<u>NAICS</u>	<u>Commodity Description</u>	<u>Size Standards</u>
		<u>Millions of Dollars(\$) or No. of employees</u>
311421	Canned Dried Beans/ Canned Fruit/ Canned Juice/Canned Vegetables	500
311423	Dried Fruit/Dehydrated Products	500
424510	Grain and Field Bean Merchant Wholesalers (Dry Beans and Legumes)	500
424480	Fresh Fruits and Vegetables Wholesalers (including Bulk)	500
311411	Frozen Fruit/ Frozen Juice/ Frozen Vegetables	500
311991	Perishable Prepared Food Manufacturing (fresh sliced apples, baby carrots, etc.)	500
311911	Roasted Nuts and Peanut Butter Manufacturing	500
311999	Corn Syrup/ Whole Eggs/ Egg Products/ All Purpose Egg Mix	500
311615	Chicken Products/ Chicken Bulk/ Turkey Products	500
112310	Shelled Eggs	\$15.0
311611	Animal (except Poultry) Slaughtering (Fine Ground/Coarse Ground Beef/Beef Patties/Pork Products)	500
311710	Seafood Products Preparation and Packaging (Fresh and Frozen Seafood)	500
311422	Specialty Canning (Canned Beef Chili without the beans/Beef Stew)	1000

(2) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, must be a small business concern with size standard shown on the above chart.

(End of provision)

The Contractor also certifies to the following:

a. **Contingent Fee Representation:** The offeror represents that, except for the full-time bona fide employees working solely for the offeror, the offeror:

1. Has not employed or retained any person or company to solicit or obtain this contract; and

2. Has not paid or agreed to pay any person or entity employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

b. **Clean Air and Water Certification:** Offeror certifies as follows:

1. Any facility in performance of this proposed contract is not listed on Environmental Protection Agency (EPA) List of Violating Facilities; and

2. The offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator or designee, of the EPA.

52.214-14 PLACE OF PERFORMANCE—SEALED BIDDING (APR 1985)

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

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

(End of provision)

52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a firm-fixed-price supply contract resulting from this solicitation.

(End of provision)

52.233-2 SERVICE OF PROTEST (SEPT 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulations, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from USDA/AMS Commodity Procurement Division, Room 3932, STOP 0256; 1400 Independence Ave, SW, Washington, DC 20250-0256.

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

(End of provision)

52.247-48 F.O.B. DESTINATION—EVIDENCE OF SHIPMENT (FEB 1999)

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

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

(2) Shall retain, and make available to the Government for review as necessary, the following evidence of shipment documentation for a period of 3 years after final payment under the contract:

(i) If transportation is accomplished by common carrier, a signed copy of the commercial bill of lading for the supplies covered by the Contractor's invoice, indicating the carrier's intent to ship the supplies to the destination specified in the contract.

(ii) If transportation is accomplished by parcel post, a copy of the certificate of mailing.

(iii) If transportation is accomplished by other than common carrier or parcel post, a copy of the delivery document showing receipt at the destination specified in the contract.

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

52.252-3 ALTERATIONS IN SOLICITATION (APR 1984)

Portions of this solicitation are altered as follows:

52.214-22 Evaluation of bids for Multiple Awards (MAR 1990)
(Individual awards will be for the items or combination of items that result in the lowest aggregate cost to the Government, excluding the assumed administrative cost.)

52.246-16 Responsibility for Supplies (APR 1984)
Title and risk of loss will pass to USDA on the date of receipt of the product at the destination specified in the contract, as evidenced by suitable dated documentation such as the consignee receipt, commercial bill of lading, warehouse receipt, dock receipt, or other similar signed and dated document evidencing delivery. If the Contractor has the product in storage and transfer of title is requested, title will pass to USDA as evidenced by the consignee receipt or commercial bill of lading or after final certification of the shipping unit by AMS agent. The Contractor is responsible for any shortage or damages as evidenced by the consignee receipt or other commercial receipt evidencing delivery of product.

Unless the contract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon--

(1) Delivery of the commodity to a carrier, if contract delivery terms are f.o.b. origin; or

(2) Acceptance by the Government or delivery of the commodities to the Government at the destination specified in the contract, whichever is later, if contract delivery terms are f.o.b. destination.

(3) If delivery is f.a.s. vessel, title and risk of loss and damage shall pass to USDA when the commodity is placed:

- (i) Alongside vessel within reach of its loading tackle, or
- (ii) On the dock designated by USDA if the vessel is not available, unless the Contractor failed to ship

pursuant to the shipping instructions and USDA determines that such failure caused the commodity to arrive too late to be loaded aboard the vessel.

B. AGAR Provisions

452.209 –70 **REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION (MAR 2012)**

(a) Awards made under this solicitation are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (P.L. No. 112-55), Division A, Sections 738 and 739 regarding corporate felony convictions and corporate federal tax delinquencies. To comply with these provisions, all offerors must complete paragraph (1) of this representation, and all corporate offerors also must complete paragraphs (2) and (3) of this representation.

(b) Paragraphs (1) through (3) of this representation were added to the certification (attribute) questions in the IFB to be completed by the offerors.

XI. FAR/AGAR CLAUSES INCORPORATED BY REFERENCE

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This Master Solicitation 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 solicitation provision may be accessed electronically at this address: <http://www.acquisition.gov/>.

48 CFR - FAR Clause Reference Number	Description	Date (Month/Year)
52.202-1	Definition	NOV 2013
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	MAY 2014
52.203-6	Restriction on Subcontractor Sales to the Government	SEP 2006
52.203-7	Anti-Kickback Procedures	MAY 2014
52.203-8	Cancellation, Rescission, and Recover of Funds for Illegal or Improper Activity	MAY 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	MAY 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	OCT 2010
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	JUL 2013
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	AUG 2013
52.211-5	Material Requirements	AUG 2000
52.211-16	Variation in Quantity	APR 1984

48 CFR - FAR Clause Reference Number	Description	Date (Month/Year)
52.219-3	Notice of Total HUBZone Set-Aside (Applicable only for contracts involving Set-Asides)	NOV 2011
52.219-6	Notice of Total Small Business Set-Aside (Applicable only for contracts involving Set-Asides)	NOV 2011
52.219-7	Notice of Partial Small Business Set-Aside (Applicable only for contracts involving Set-Asides)	JUN 2003
52.219-8	Utilization of Small Business Concerns (Applicable if contract amount exceeds \$150,000)	OCT 2014
52.219-9	Small Business Subcontracting Plan (Applicable if contract amount exceeds \$650,000)	OCT 2014
52.219-9	Small Business Subcontracting Plan – Alternate 1	OCT 2001
52.219-14	Limitations on Subcontracting	NOV 2011
52.219-16	Liquidated Damages – Subcontracting Plan (Applicable only when Clause 52.219-16 applies)	JAN 1999
52.219-27	Notice of Service-Disabled Veteran-Owned Small Business Set Aside	NOV 2011
52.219-30	Notice of Set Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program	JUL 2013
52.222-1	Notice to the Government of Labor Disputes	FEB 1997
52.222-3	Convict Labor	JUN 2003
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	MAY 2014
52.222-21	Prohibition of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	MAR 2007
52.222-35	Equal Opportunity for Veterans	JUL 2014
52.222-36	Affirmative Action for Workers with Disabilities	JUL 2014
52.222-37	Employment Reports on Veterans	JUL 2014
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010
52.222-50	Combating Trafficking in Persons	MAR 2015
52.223-6	Drug-Free Workplace	MAY 2001
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008
52.229-3	Federal, State, and Local Taxes	FEB 2013
52.232-1	Payments	APR 1984
52.232-8	Discounts for Prompt Payment	FEB 2002
52.232-11	Extras	APR 1984
52.232-17	Interest	MAY 2014
52.232-18	Availability of Funds	APR 1984
52.232-23	Assignment of Claims	MAY 2014
52.232-25	Prompt Payment	JUL 2013
52.232-33	Payment by Electronic Funds Transfer – System for Award Management	JUL 2013
52.233-1	Disputes	MAY 2014
52.233-3	Protest After Award	AUG 1996
52.233-4	Applicable Law for Breach of Contract Claim	OCT 2004

48 CFR - FAR Clause Reference Number	Description	Date (Month/Year)
52.242-13	Bankruptcy	JUL 1995
52.242-17	Government Delay of Work	APR 1984
52.243-1	Changes – Fixed Price	AUG 1987
52.246-2	Inspection of Supplies – Fixed-Price	AUG 1996
52.246-15	Certificate of Conformance	APR 1984
52.246-16	Responsibility for Supplies	APR 1984
52.247-16	Contractor Responsibility for Returning Undelivered Freight	APR 1984
52.247-34	F.O.B. Destination	NOV 1991
52.247-36	F.A.S. Vessel, Port of Shipment	APR 1984
52.247-48	F.O.B. Destination – Evidence of Shipment	FEB 1999
52.247-58	Loading, Blocking, and Bracing of Freight Car shipments	APR 1984
52.249-1	Termination for Convenience of the Government (Fixed-Price)(Short Form) (Applicable if contract amount is \$100,000 or less)	APR 1984
52.249-2	Termination for Convenience of the Government (Fixed-Price) (Applicable if contract amount exceeds \$100,000)	APR 2012
52.249-8	Default (Fixed-Price Supply and Service)	APR 1984
52.253-1	Computer Generated Forms	JAN 1991

48 CFR – AGAR Clause Reference Number	Description	Date (Month/Year)
452.246-70	Inspection and Acceptance	FEB 1988
452.247-70	Delivery Location	FEB 1988
452.247-71	Marking Deliverables	FEB 1988
452.247-72	Packing for Domestic Shipment	FEB 1988

A. FAR Clauses

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.

Contracting Officer
 USDA/AMS Commodity Procurement Staff
 1400 Independence Avenue, SW
 Room 3522-S, Mail Stop 0239
 Washington, DC 20250-0239

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name _____

Manufacturer's Name _____

Source's Name _____

Item Name _____

Service Identification _____ N/A _____

Test Number _____ N/A _____
 (to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government's interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

Qualification Requirements for Prospective Contractors Selling Commodities to USDA can be obtained or viewed at this link:

<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5076259>

52.211-11 LIQUIDATED DAMAGES—SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT (SEP 2000)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of \$0.0025 per pound per calendar day of delay, not to exceed 45 days of delay.

(b) If the Government terminates this contract in whole or in part under the Default—Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

(End of clause)

52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

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

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

(End of clause)

B. AGAR Clauses

452.209 –71 ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE APPLICANTS (MAR 2012)

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

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

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

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

(End of clause)

452.211-74

PERIOD OF PERFORMANCE (FEB 1988)

The period of performance of this contract is stipulated in the IFB.

(End of clause)

452-246-70 INSPECTION AND ACCEPTANCE – ALTERNATE I (FEB 1988)

As prescribed in 446.370, substitute paragraph (b) and add a paragraph (c):

(b) Inspection will be performed at the contractor's facility, except for fresh fruit and vegetable products which is performed at the destination specified in the contract;

(c) Acceptance will be performed at the destinations specified in the contract.

(End of clause)

XII. INQUIRIES

Inquiries pertaining to this Master Solicitation, Commodity Specifications and/or Supplements, applicable Solicitations, and payment should be directed to:

Contracting Officer
USDA/AMS Commodity Procurement Staff
1400 Independence Avenue, SW
Room 3522-S, Mail Stop 0239
Washington, DC 20250-0239

Telephone: 202-720-4517

DOMESTIC ORIGIN CERTIFICATION

DOMESTIC ORIGIN CERTIFICATION For Fruit and Vegetable Products and Poultry Products This form must be completed by an authorized company official or their designee for each contract/purchase order delivery awarded. The completed form must be presented to a representative of the USDA, Agricultural Marketing Service (AMS), certification agent at the processing facility; the completed form must also be presented to the USDA Contracting Officer or agent thereof upon request. *If imported product is brought into the facility during the production and shipment of product for this contract, it is the Contractor's responsibility to notify the applicable certification branch.* Each Contractor and/or processing facility under this contract must have a copy of this form on file.

Solicitation Number: _____

Contract/Purchase Order Number: _____

Product: _____

Crop Year (Packing Season, if applicable): _____

Does your company process or handle products originating from sources other than the United States, its territories or possessions, Puerto Rico, or the Trust Territories of the Pacific Islands?

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

Do any of your Subcontractor/Suppliers processes or handle products originating from sources other than the United States, its territories or possessions, Puerto Rico, or the Trust Territories of the Pacific Islands?

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

I certify that all products sold to the Department of Agriculture are of 100 percent domestic origin and that all above statements are true. I further certify that traceability documentation will be made available to USDA, Agricultural Marketing Service representatives upon request.

WARNING: 18 U.S.C. Part 1, Chapter 47, Section 1001 states that "Except as otherwise provided in this section, whoever, in any manner within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

Knowingly and willingly making false statements for fresh or frozen fruits and vegetables may also constitute a violation of the Perishable Agricultural Commodities Act (7 U.S.C., 499a-499t), and may result in monetary penalties or license suspension or revocation.

Signature: _____
Print and Sign Name (Only authorized signatures)

Title: _____

Company: _____

Date: _____

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

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

Not sure what browser version you are using?

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

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

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

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

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

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

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

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

[Set IE8 Zoom Settings for WBSCM](#)

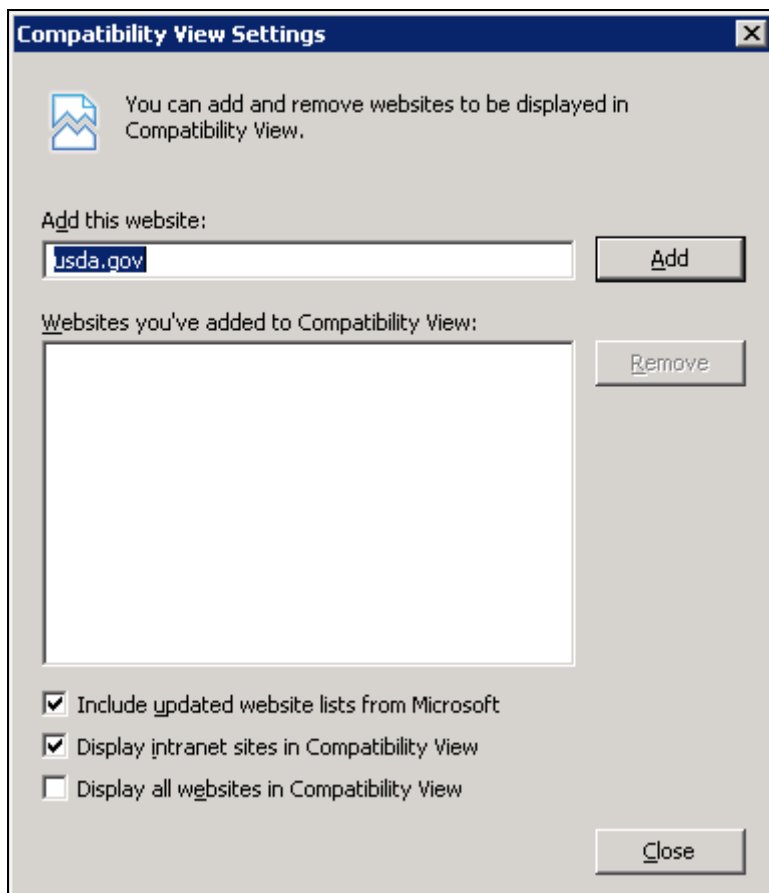
[Downgrading from IE11 to IE10](#)

[Performing Browser Check](#)

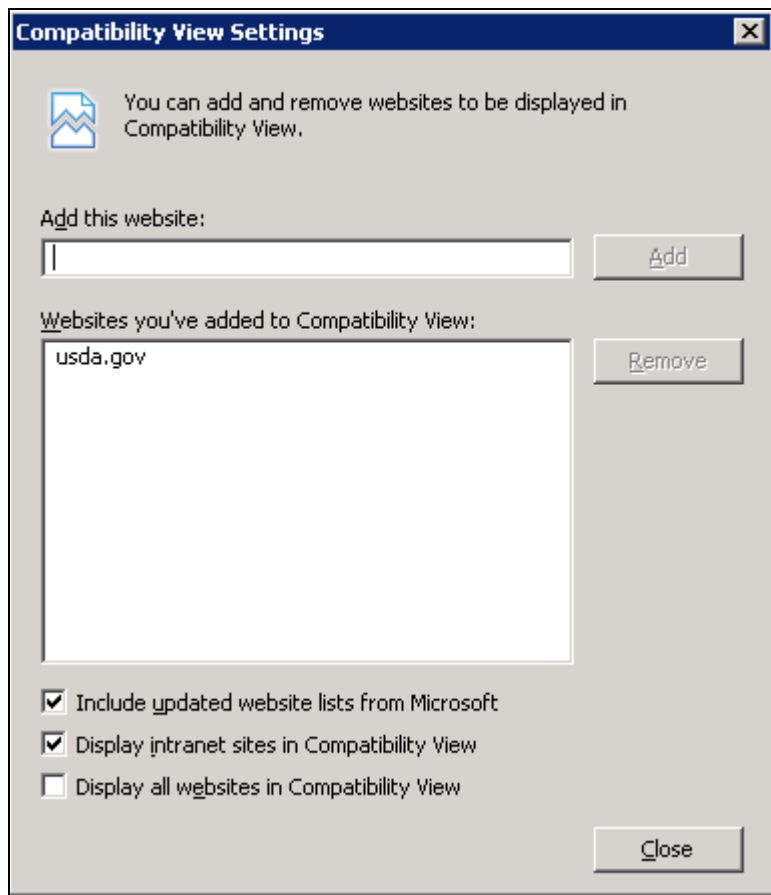
Add USDA.gov to Compatibility View Websites List:

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

You will then see the pop-up box below:



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



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



Add WBSCM to the Trusted Sites List:

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



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



4. Select **Trusted Sites** from the *Zone* choices.
5. Click the **Sites** button.

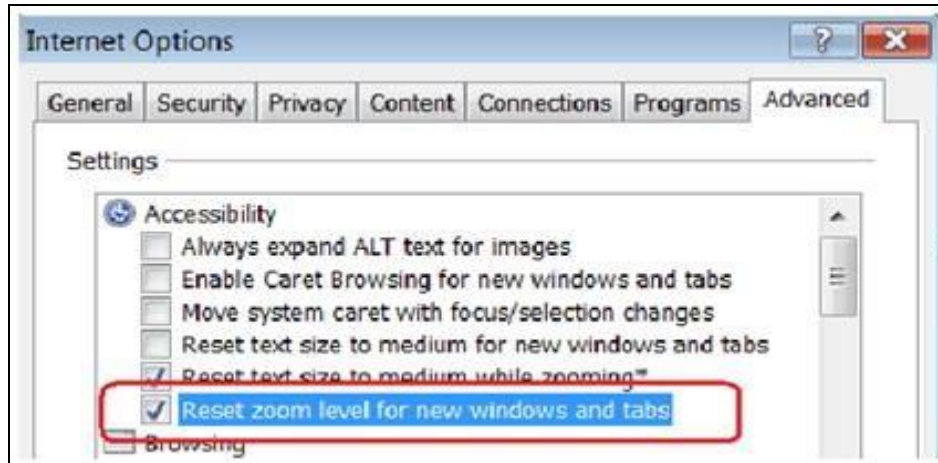
A screenshot of a web management interface. At the top, a green checkmark icon is followed by the text: "You can add and remove websites from this zone. All websites in this zone will use the zone's security settings." Below this, the section "Add this website to the zone:" contains a text input field with the text "*.usda.gov" and a blue "Add" button with a mouse cursor hovering over it. Underneath, the "Websites:" section features a list box containing "*.accenture.com" and "*.skillport.com", with a "Remove" button to its right. At the bottom left, there is a checkbox labeled "Require server verification (https:) for all sites in this zone" which is currently unchecked. A "Close" button is located at the bottom right.

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

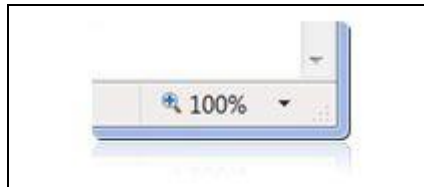
A second screenshot of the same web management interface. The "Add this website to the zone:" section now has an empty text input field and a disabled "Add" button. The "Websites:" list box now includes three entries: "*.accenture.com", "*.skillport.com", and "*.usda.gov". The "Remove" button remains to the right of the list. The checkbox for "Require server verification (https:) for all sites in this zone" is still unchecked, and the "Close" button is at the bottom right.

Set IE8, 9, 10 Zoom Setting for WBSCM:

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



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



Downgrading from Internet Explorer 11 to Internet Explorer 10:

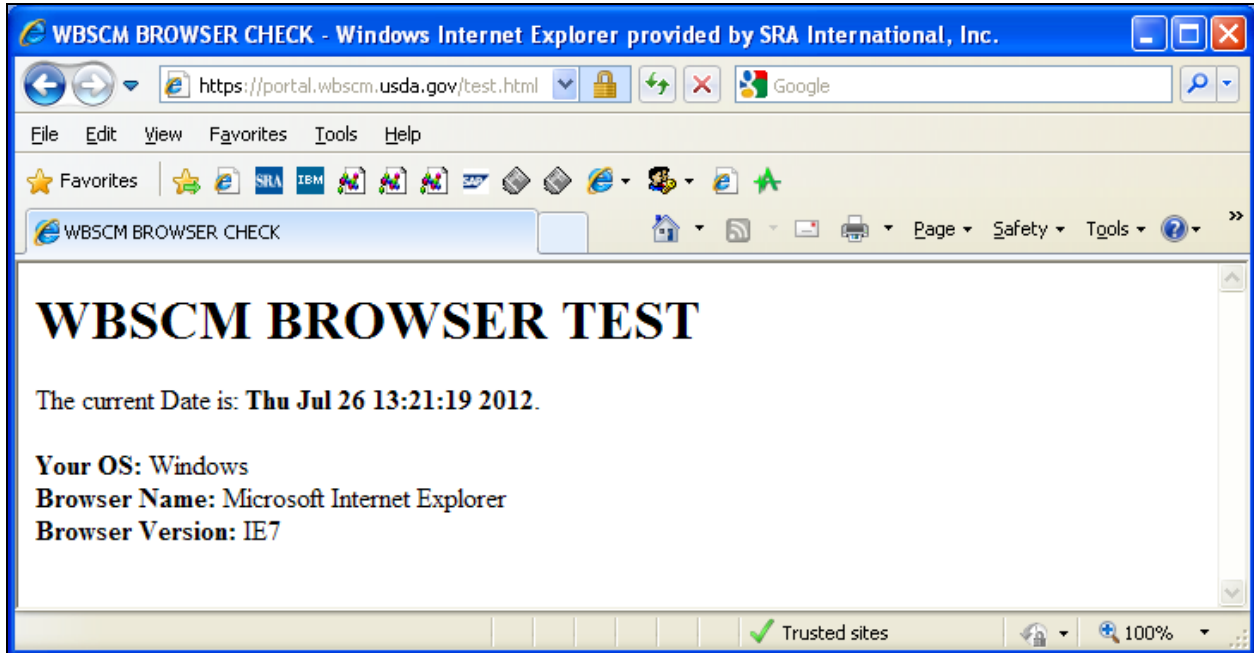
1. Close all active programs.
2. Click the **Start** button.
3. Click the **Control Panel** icon.
4. Click on **Programs and Features**.
5. Click **View Installed Updates** in the task pane.
6. Now select **Windows Internet Explorer 11** shown under Microsoft Windows updates.
7. Click the **Uninstall**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

Perform Browser Check:

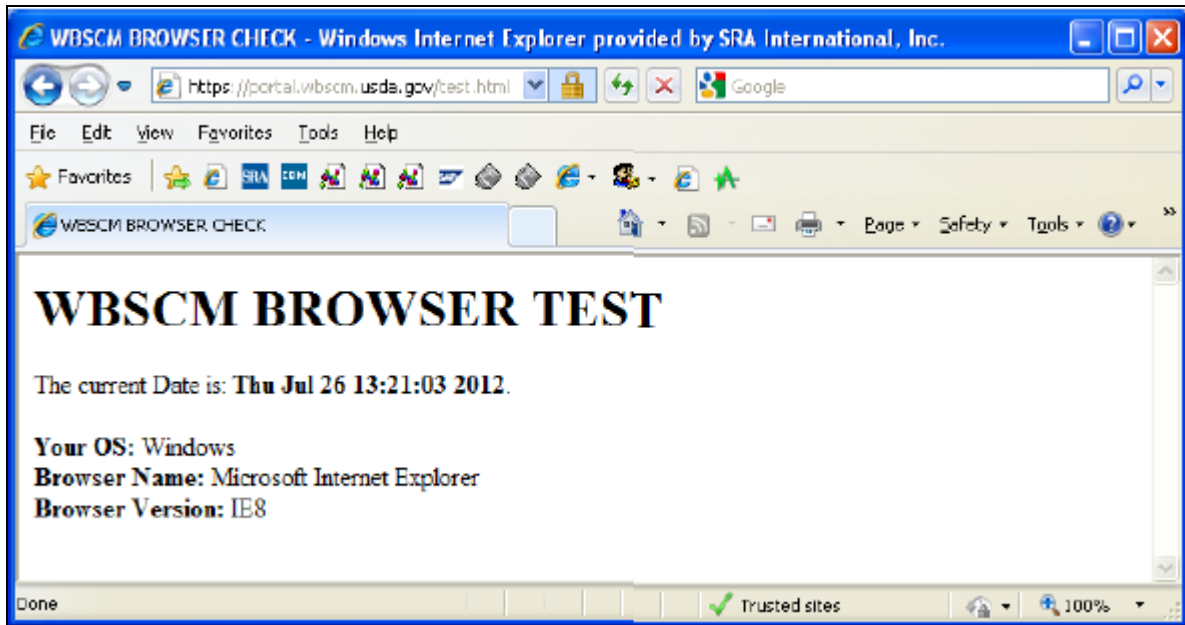
To perform a browser check type the following URL in the Navigation toolbar:

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

This is what an IE7 user will see:



This is what an IE8 user will see:



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



This is what a Firefox user will see:





Desktop Hardware/Software Recommended

• Processor/Memory

Microsoft Vista / Windows 7 / Windows 8		
	Minimum Required	Recommended
Processor	1 GHz	Dual Core 2 GHz
Memory	2 GB	4 GB
Video Card	8 MB Video card with 16 million colors at 1024x768 resolution	16 MB Video card with 16 million colors at 1024x768 resolution
Monitor	Color SVGA monitor and display adapter, 1024x768 resolution, 16 Million Colors	Color SVGA monitor and display adapter, 1024x768 resolution, 16 Million Colors

• Software

Software	Manufacturer	Version
Operation System	Microsoft	Microsoft Windows Vista SP2 (IE8, IE9) – 32 or 64 bit Microsoft Windows 7 SP1 (IE8, IE9, IE10) – 32 or 64 bit Microsoft Windows 8 (IE10)
PDF Reader	Adobe	Adobe Acrobat Reader 9.0 or higher
Flash Player	Adobe	Adobe Flash Play 10.3.183.7 and above
Silverlight	Microsoft	Microsoft Silverlight 5 Browser plug in
Java Run Time	Oracle	Java Run Time 7 Update 51 or higher
Browser	Microsoft	Internet Explorer version 8, 9, or 10
Office (Word, Excel)	Microsoft	MS Office 2007, 2010