

**AMS Master Solicitation for Commodity Procurements
Emergency -Master Solicitation for Commodity Procurement (E-MSCP)
Farmers to Families Food Box
Commercial Item**

Effective Date: April 24, 2020

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I. GENERAL INFORMATION

This Emergency - Master Solicitation for Commodity Procurements (E-MSCP), is used by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), to provide contract clauses and solicitation provisions applicable to the solicitation of proposals under a Federally declared emergency. USDA Foods under this contract must be a product of the United States (see clause 4A52.225-1 U.S. Origin Product). Specifications and program requirements are further defined in the appropriate request for proposal. Awards will be made following the principles in the FAR and AGAR.

II. CONTRACT CLAUSES

Note: *Items marked with an asterisk (*) have been tailored in the addenda below in **B**.

A. 52.212-4 Contract Terms and Conditions—Commercial Items (Oct 2018)

(a) *Inspection/Acceptance*. * The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment*. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)).

However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes*. * Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes*. This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions*. * The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.** 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, unusually severe weather, and delays of common carriers. 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.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer- Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C.3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part1315.

(h) *Patent indemnity*. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.-

(1) *Items accepted*. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment*. The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C.3903](#)) and prompt payment regulations at 5 CFR Part1315.

(3) *Electronic Funds Transfer (EFT)*. If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount*. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable;
and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest*.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express

warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(t) [Reserved]

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern: Any such clause is unenforceable against the Government.

(i) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or

any Government authorized end user to such clause.

(ii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

Items above marked with an asterisk (*) have been tailored in the addenda below in **B**.

B. ADDENDA TO 52.212-4

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

(1) 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) In order to minimize administrative operating costs, contractor shall upload the following items with the invoice for payment in WBSCM:

(A) Proof of delivery as evidenced by one of the following (the contracting officer reserves the right to accept commercial equivalents for the following proof of delivery tenders) —

(i) Signed bill of lading (BOL) which includes:

- i. Shipper Name and Shipment Origin Address
- ii. USDA Contractor Name, if different than shipper
- iii. Purchase Order Number and Item Number
- iv. When provided, Sales Order Number and Item Number
- v. Consignee: Purchase Order Item's Goods Recipient Name c/o Purchase Order Item's Ship-to Name and Address
- vi. Number and Type of Units, Net Weight, Material Description, and WBSCM material number
- vii. Statement: "For USDA FOOD DISTRIBUTION PROGRAMS"
- viii. Manufacturer's Lot Code/Lot Identification Number
- ix. Serial Number(s) of Barrier-Type Seals Applied
- x. Carrier's Signature and Date
- xi. Date of Shipment

(ii) Commercial receipt noting quantity of product delivered signed and dated by the consignee,

(iii) Destination USDA inspection certificate,

(B) Proof of product conformance as evidenced by one of the following:

- (i) Official checkloading certificate(s),
- (ii) Copies of Certificate of Analysis (COA) and/or
- (iii) A commercial equivalent documenting product conformance as

- deemed appropriate by the contracting officer
- (iv) AMS Commodity Inspection Certificate or Graders Memorandum
 - (C) Any waivers granted by the Contracting Officer, if applicable.
 - (D) The Contracting Officer reserves the right to specify any combination of documents listed above to evidence proof of product conformance and proof of delivery.

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

C. ADDITIONAL CLAUSES

52.204-7 System for Award Management (Oct. 2018)

a) Definitions. As used in this provision—

“Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

Registered in the System for Award Management (SAM) means that—

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14) into SAM

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

Unique entity identifier means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b)

(1) An Offeror is required to be registered in SAM as soon as possible. If registration is not possible when submitting an offer or quotation, the awardee shall be registered in SAM in accordance with the requirements of clause 52.204-13, System for Award Management Maintenance.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

- (1) Company legal business name.
- (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (3) Company physical street address, city, state, and Zip Code.
- (4) Company mailing address, city, state and Zip Code (if separate from physical).
- (5) Company telephone number.
- (6) Date the company was started.
- (7) Number of employees at your location.
- (8) Chief executive officer/key manager.
- (9) Line of business (industry).
- (10) Company headquarters name and address (reporting relationship within your entity).

(d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

(End of provision)

52.204-13 System for Award Management Maintenance (Oct. 2018)

System for Award Management Maintenance. (Oct 2018)

(a) Definitions. As used in this clause—

Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity.

Registered in the System for Award Management (SAM) means that—

(1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)), into SAM;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

System for Award Management (SAM) means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

Unique entity identifier means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision 52.204-7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in SAM 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 SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(i) If a Contractor has legally changed its business name or “doing business as” name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

(A) Change the name in SAM;

(B) Comply with the requirements of subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor’s SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at www.sam.gov for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at https://www.sam.gov.

(End of clause)

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) (Sept 2019)

- (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.

(End of clause)

452.211-73 Attachments to Specifications (Feb 1988)

Specifications listed in Part III, "Contract Documents, Exhibits, and Attachments," are hereby made part of this solicitation and any resultant contract.

(End of Clause)

452.211-74 Period of Performance (Feb 1988)

The base period of performance of this contract is from the earliest delivery date required in the schedule of supplies through the latest delivery date required in the schedule of supplies.

(End of Clause)

452.211-75 Effective Period of the Contract (Feb 1988)

The effective period of this contract is from contract award date through final invoice payment date.

(End of Clause)

4A52.211-1 Delivery Instructions

The Government may 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)

4A52.211-3 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) **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.

(c) SHIPPING CONTAINERS:

- (1) Labeling and marking information must be water-fast, non-smearing, of a contrasting color, clear and readable.
- (2) **Nutrition Facts, Ingredients and Allergen statements** comply with the Food Allergen labeling and Consumer Protection Act (FALCPA).

- (d) The Contracting Officer reserves the right to accept commercial equivalents in place of any of the requirements written in this clause. The Contracting Officer reserves the right to accept flexibilities enacted by the FDA and other governing bodies in relation to packaging and labeling.

(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, of the Master Solicitation.
- (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) 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. 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.

(f) Upon request, contractors shall be required to return milk crates to entities providing dairy products to the originating source.

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

4A52.232-1 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)

4A52.232-40 Payments to subcontractors and sheltered income prohibition

- (a) Upon receipt of payments from the Government, the Contractor shall make payments to its commodity subcontractors under this contract within 30 days after receipt of a proper invoice and all other required documentation from the 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.
- (d) Sheltered income in the acquisition of commodities is prohibited. Sheltered income may include but is not limited to: rebates, discounts, marketing fees etc). The Contracting Officers reserved the right to request copies of subcontractor invoices and associated documentation.”

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 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)

4A52.246-1(a) Contract Quality Requirements

- (a) Commodity Procurement Program provides food to those in need domestically and abroad. In order to provide a nutritious, safe, and American grown product to recipients the Contractor must ensure that products and/or packaging have not been tampered with or contaminated throughout the growing, storage, and delivering process. The Contractor must immediately inform Commodity Procurement Program of any attempt or suspected attempt by any party or parties, known or unknown, to tamper with or contaminate subsistence supplies.
- (b) As the holder of a contract with the United States Department of Agriculture, the Contractor should be aware of the vital role it plays in supporting Agency's customers. It is incumbent upon the Contractor to take all necessary actions to secure product delivered to all customers.
- (c) When requested the Contractor shall submit a food defense plan prior to the start of performance under any resultant contractor to describe what steps it has taken and will take to prevent product tampering and contamination. The Contractor will also describe what steps have been or will be taken that relate to overall food safety.
- (d) The Specialty Crops Program can review Food Defense Plans during inspection or facility audit.
- (e) Pathogens: The Contractor shall use prevailing commercial practice for testing pathogens.
- (f) In order to facilitate the expedited purchases of commodities and address the challenges with conducting audits of fruits and vegetable that are sourced from storage; AMS will allow greater flexibility to verify food safety requirements. Suppliers must meet one of the following:
 - (1) USDA Good Agricultural Practices/Good Handling Practices audit conducted by a USDA-AMS auditor.
 - (2) Global Food Safety Initiative (GFSI) benchmarked certification program audits (GlobalGAP, SQF, Primus GFS, CanadaGAP).
 - (i) USDA-AMS reserves the right to conduct onsite or remote validation audits of any vendor.
- (g) The Government reserves the right to perform inspection of ingredients at origin prior to assembling the final containers.
- (h) Product count, sizing, or weight requirements shall be equivalent to readily available commercial items.
- (i) The Contractor shall ensure the necessary amount of traceability required to meet the Commodity Procurement Programs 100% domestic origin requirement.
- (j) The Government reserves the right to conduct a domestic origin traceability audit of at least one shipment for each approved vendor.
- (k) The Contractor shall ensure that loads are to remained sealed in accordance with commercial standards.
- (l) Fresh produce items shall be sound and wholesome, and in suitable shipping condition to arrive at the contract destination without abnormal deterioration.
- (m) Milk and dairy products purchased and delivered to the Government shall have been manufactured from milk and dairy ingredients that were produced in the United States and

not previously owned by the Government. They shall be either manufactured in plants that were inspected and approved by the Dairy Grading Branch, Dairy Programs Agricultural Marketing Service (AMS) or manufactured in plants that are registered and regulated under the jurisdiction of the Federal FDA's Food Safety Modernization Act (FSMA).

- (n) For Meat/Poultry Products: All products must be produced under Federal inspection and USDA reserves the right to conduct onsite reviews or audits.
- (o) The contractor is responsible for paying all fees associated with USDA services, e.g., audit, inspection, domestic trace, and food defense plan reviews.

INCORPORATED BY REFERENCE (IBR)

The following clauses have been incorporated by reference:

52.203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights. (Apr 2014)

52.232-11 Extras (Apr 1984)

52.232-18 Availability of Funds (Apr 1984)

52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)

52.242-13 Bankruptcy (July 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)

52.246-15 Certificate of Conformance (Apr 1984)

52.247-34 F.o.b. Destination (Nov 1991)

52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments (Apr 1984)

52.253-1 Computer Generated Forms (Jan 1991)

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders- Commercial Items (Aug 2019) *as identified in MSCP-D (Oct. 2019)

A. SOLICITATION PROVISIONS

452.204-70 Inquiries (Feb 1988)

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the Contracting Officer issuing the solicitation about any aspect of this requirement prior to contract award.

(End of provision)

52.209-7 Information Regarding Responsibility Matters (Oct 2018)

(a) *Definitions.* As used in this provision—

“Administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

“Federal contracts and grants with total value greater than \$10,000,000” means—

- (1) The total value of all current, active contracts and grants, including all priced options; and
- (2) The total value of all current, active orders including all priced options under indefinite- delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror has does not have current active Federal contracts and grants with total value greater

than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

- (1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:
 - (i) In a criminal proceeding, a conviction.
 - (ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
 - (iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management, which can be accessed via www.sam.gov (see [52.204-7](#)).

(Applicable for contracts expected to exceed \$550,000)

(End of provision)

4A52.209-1 Past Performance with Regard to Offeror's Present Responsibility

(a) Offerors 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.

(b) 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.

(End of provision)

52.222-22 Previous Contracts and Compliance Reports (Feb 1999)

The offeror represents that—

(a) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) It has, has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

B. INCORPORATED BY REFERENCE (IBR)

52.225-25 -- Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications (Aug 2018)