

## Commodity Credit Corporation, USDA

## § 1496.3

CCC. Except as otherwise provided in this subpart, the program operations provisions of subpart B of this part, relating to the Export Enhancement Program, will also apply to the DEIP. Any terms or conditions applicable to a particular Invitation for Offers (Invitation) under the DEIP, beyond those terms or conditions set forth in this subpart or subpart B of this part, will be specifically provided for in such Invitation.

### § 1494.1201 Paperwork Reduction Act.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control No. 0551-0029.

## PART 1495 [RESERVED]

## PART 1496—PROCUREMENT OF COMMODITIES FOR FOREIGN DONATION

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AUTHORITY: 7 U.S.C. 1431(b), 1721-1726a, 1731-1736g-2, 1736o, 1736o-1; 15 U.S.C. 714b and 714c; 46 U.S.C. 55305 and 55314.

SOURCE: 44 FR 27407, May 10, 1979, unless otherwise noted.

### § 1496.1 General statement.

This subpart sets forth the policies, procedures and requirements governing the procurement of agricultural commodities by CCC to be donated for assistance overseas under Title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480); the Food for Progress Act of 1985; the McGovern-Dole International Food for Education and Child Nutrition Program; and any other program under which CCC is authorized to provide agricultural commodities for assistance overseas.

[72 FR 6455, Feb. 12, 2007]

### § 1496.2 Administration.

(a) The program will be carried out by the Farm Service Agency (referred to in this subpart as "FSA") under the general supervision and direction of the Executive Vice President of CCC. The program will be administered through the Office of the Deputy Administrator, Commodity Operations, FSA, Washington, DC and the Kansas City Commodity Office (KCCO), FSA, Kansas City, Missouri.

(b) Purchases are made to fulfill commodity requests received from AID in the administration of Public Law 480 and from a grantee organization receiving commodities under the other authorities set forth in §1496.1 of this part.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5728, Feb. 25, 1987; 72 FR 6455, Feb. 12, 2007]

### § 1496.3 Definitions.

As used in the regulations in this subpart and in the forms and documents related thereto, the following terms shall have the meaning assigned to them in this section.

(a) *AID* means the Agency for International Development, an agency within the United States Department of State.

(b) *FSA* means the Farm Service Agency, an agency within the United States Department of Agriculture.

(c) *DACO* means the Deputy Administrator, Commodity Operations, FSA.

(d) *CCC* means Commodity Credit Corporation, a corporate agency within the United States Department of Agriculture.

(e) *Commodity Office* means the Kansas City Commodity Office, within FSA, which is responsible for assigned inventory management, acquisition, disposition and related program activities of CCC.

(f) *Lowest landed cost* means the lowest combined total cost of the commodity plus transportation charges to the port of discharge.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5728, Feb. 25, 1987]

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## 7 CFR Ch. XIV (1-1-08 Edition)

### § 1496.4 Issuance of invitations.

From time to time, CCC will issue invitations to purchase or process agricultural products for utilization in the foreign assistance programs enumerated in §1496.1 of this part. The invitations will specify the contract terms; the closing date for acceptance of bids; the date contracts will be awarded; and other pertinent information. Invitations will be issued at least 10 days prior to the deadline for submission of bids. The bid submission deadlines and contract awards will be timed so not more than one market day elapses between bid opening (bid submission deadline) and contract awards.

[44 FR 27407, May 10, 1979, as amended at 72 FR 6455, Feb. 12, 2007]

### § 1496.5 Consideration of bids.

(a)(1) *Lowest landed cost.* The general principle of awarding contracts that will result in the lowest landed cost will prevail. Lowest landed cost will be calculated on the basis of U.S. flag rates and service for that portion of the commodities being purchased that CCC determines is necessary and practicable to meet cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being purchased. However, the additional factors set forth in this section will be considered in awarding contracts.

(b) *Availability of ocean service.* (1) In determining lowest-landed cost as specified in paragraph (a) of this section, CCC will use vessel rates offered in response to invitations issued by AID or grantee organizations receiving commodities under the authorities set forth in §1496.1 of this part. If CCC or AID, in the case of Title II, Public Law 480, determines that it is not practicable to evaluate lowest-landed cost on the basis of a competitive ocean freight bid process, CCC may use other methods of soliciting freight rates that USDA or AID may approve for the foreign assistance programs that they respectively administer.

(2) In order to be considered in lowest-landed cost commodity bid evaluations, ocean freight rates must be submitted to grantee organizations or AID in response to an invitation for bids

issued by grantee organizations or AID. All such freight invitations for bids must:

(i) Specify a closing time for the receipt of written freight offers and state that late written freight offers will not be considered;

(ii) Provide that written freight offers are required to have a canceling date no later than the last contract lay day specified in the invitation for bids;

(iii) Provide the same deadline for receipt of written freight offers from both U.S. flag vessel and non-U.S. flag vessels; and

(iv) Must be received and opened prior to receipt of written freight offers for the sale of commodities to CCC. The extent to which offered rates may be made public will depend upon regulations or guidelines applicable to the specific foreign assistance program involved.

(3) CCC may require donee organizations or AID to specify in their freight invitations that the ocean carriers submit bids electronically through a web-based system maintained by CCC. In the event of any discrepancy between information furnished to CCC electronically and the written offers submitted to grantee organizations or AID, the offers submitted to the grantee organization or AID will prevail. Copies of all written freight offers received in response to invitations for bids must be promptly furnished to CCC and CCC may require the grantee organization or its shipping agent to submit a written certification that all non-electronic offers received were transmitted to CCC.

(c) [Reserved]

(d) *Port performance.* (1) CCC may contact any port prior to bid evaluation to determine the port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors which will be considered in this determination will include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. CCC will require that capacity information be submitted electronically by the port and or the terminal prior to bid evaluation.

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(2) If CCC determines that: A port is congested; facilities are overloaded; a vessel would not be able to dock and load cargo without delay; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or other similar situation exists that may adversely affect the ability of CCC to have the commodity delivered in a timely manner, CCC may consider the use of another coastal range or port. In considering another combination of commodity offers and vessel rate offers, CCC will adhere as closely as possible to the principal of lowest-landed cost.

(e) *Transit time.* CCC will consider total transit time, as it relates to a final delivery date, in order to satisfy program requirements.

(f) *Great Lakes ports.* (1) Commodities offered for delivery "free alongside ship" (f.a.s.) Great Lakes port range or intermodal bridge-port Great Lakes port range that represent the overall (foreign and U.S. flag) lowest landed cost will be awarded on that basis. Such offers will not be reevaluated on a lowest landed cost U.S.-flag basis unless CCC determines that 25 percent of the total annual tonnage of bagged, processed or fortified commodities furnished under Title II of Public Law 480 has been, or will be, transported from the Great Lakes port range during that fiscal year.

(2) CCC will consider commodity offers as offers for delivery "intermodal bridge-port Great Lakes port range" only if:

(i) The offer specifies delivery at a marine cargo-handling facility that is capable of loading ocean going vessels at a Great Lakes port, as well as loading ocean going conveyances such as barges and container vans, and

(ii) The commodities will be moved from one transportation conveyance to another at such a facility.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5729, Feb. 25, 1987; 63 FR 11104, Mar. 6, 1998; 72 FR 6455, Feb. 12, 2007]

### § 1496.6 Data to be used.

(a) CCC will use all available historical and current data as a basis for procurement considerations, including evaluations and decisions regarding the physical facilities and performance of

ports. Heavy reliance will be placed upon current port conditions as determined from first hand observations and reports from USDA and other reliable sources.

(b) The primary source of historical data will be documents used in the normal course of conducting business. Sources include contract documents, ocean bills of lading, survey and/or outturn reports made by commercial cargo surveyors, claim settlement agreements, claim payment documents, etc. CCC will utilize only such data and make only those analyses that it believes will provide a valid measure of program performance.

### § 1496.7 Final contract determinations.

(a) *Commodity awards.* (1) Invitations for the procurement of commodities and the evaluation of bids submitted in response to such invitations shall be performed as provided in the Federal Acquisition Regulations (FAR) and Department of Agriculture's procurement regulations set forth in chapter 4 of title 48 of the Code of Federal Regulations (the AGAR).

(2) If more than one bid for the sale of commodities is received and more than one delivery point has been designated in such bids, in order to achieve a combination of a freight rate and commodity award that produces the lowest-landed cost for the delivery of the commodity to the foreign destination, CCC may evaluate bids submitted for the sale of commodities on a delivery point-by-delivery point basis. In such cases, all bids submitted with respect to a specific delivery point will be evaluated under the provisions of the FAR, AGAR, and the solicitation, and CCC will determine the lowest bid for each delivery point.

(b) *Combination of bids.* CCC will determine which combination of commodity bids and bids for ocean freight rates result in the lowest-landed cost of delivery of the commodity to the foreign destination. CCC will award the contract for the purchase of the commodity that results in the lowest-landed cost and would be transported in compliance with cargo preference requirements under regulations prescribed by the Secretary of Transportation. The Contracting Officer may

determine that extenuating circumstances preclude awards on the basis of lowest-landed cost, or efficiency and cost-savings justify use of types of ocean service that would not involve an analysis of freight bids for each of CCC's commodity purchases; however, in all such cases, commodities would be transported in compliance with cargo preference requirements under regulations prescribed by the Secretary of Transportation. Examples of extenuating circumstances are events such as internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination. Other types of services may include, but are not limited to, multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery Cost and Freight (C & F), delivery Cost Insurance and Freight (CIF), and indexed ocean freight costs. Before contracts are awarded for other than a lowest-landed cost, the Contracting Officer shall consult with the applicable program agencies, and set forth, in writing, the reasons the contracts should be awarded on other than a lowest-landed cost.

(c) *Notification of awards.* (1) The party submitting the accepted commodity procurement bid will be notified of the acceptance of the bid by CCC.

(2) AID or the grantee organization, or its shipping agent, will be notified of the vessel freight rate used in determining the commodity contract award. The grantee organization or AID will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate so used.

[72 FR 6456, Feb. 12, 2007]

## PART 1499—FOREIGN DONATION PROGRAMS

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- 1499.16 Records and reporting requirements.
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- 1499.20 Paperwork reduction requirement.

AUTHORITY: 7 U.S.C. 1431(b); 7 U.S.C. 1736o; E.O. 12752.

SOURCE: 61 FR 60515, Nov. 29, 1996, unless otherwise noted.

### § 1499.1 Definitions.

*Activity*—a Cooperating Sponsor's use of agricultural commodities provided under Program Agreements or use of sale proceeds.

*Agricultural Counselor or Attache*—the United States Foreign Agricultural Service representative stationed abroad, who has been assigned responsibilities with regard to the country into which the commodities provided are imported, or such representative's designee.

*CCC*—the Commodity Credit Corporation.

*Commodities*—agricultural commodities or products.

*Director, P.L. 480-OD*—the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA.

*Director, CCCPSD*—the Director, CCC Program Support Division, Foreign Agricultural Service, USDA.

*Director, PDD*—the Director, Program Development Division, Foreign Agricultural Service, USDA.

*Deputy Administrator*—Deputy Administrator for Export Credits, Foreign Agricultural Service, USDA.

*Force Majeure*—damage caused by perils of the sea or other waters; collisions; wrecks; stranding without the fault of the carrier; jettison; fire from