

other flag vessels to carry commodities shipped under Title II, Pub. L. 480.

(c) *Adequacy of service.* (1) Prior to the selection of a coastal range or U.S. port from which commodities will be shipped, the ocean transportation service available may be examined to determine adequacy of service. The data utilized may include, but not necessarily be limited to, the past performance of a particular vessel or steamship line in terms of loss and/or damage to cargo when received at destination port; past performance in meeting established delivery schedules, etc. CCC may eliminate from consideration ports or coastal ranges where ocean transportation service is considered inadequate by CCC. When clearly superior service is available at another port or coastal range it may be selected over other service.

(d) *Port performance.* (1) Each port will be contacted prior to bid evaluation to determine their cargo handling capabilities for Title II, Pub. L. 480, commodities when it is reasonably expected that quantities of 1,000 tons or more may be shipped. Allocations to that port will be governed by the minimum or maximum quantities indicated.

(2) Limits of quantities purchased for delivery to a port or coastal range may also be imposed by the amount of vessel space available during the expected delivery and loading period.

(3) Prior to the final selection of a U.S. port from which commodities will be shipped, the adequacy of the port to receive, accumulate, warehouse, handle, store, and protect the cargo will be considered.

(4) Factors which will be considered in this determination will include, but are not necessarily limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices.

(5) When it is determined that the U.S. port is congested, facilities are overloaded, and a vessel would not be able to dock and load cargo without delay, or when labor disputes or lack of labor will prohibit the loading of the cargo onboard a vessel in a timely

manner, another coastal range or port will be considered.

(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]

§ 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

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data and make only those analyses that it believes will provide a valid measure of program performance.

§ 1496.7 Final contract determinations.

The KCCO shall be responsible for making lowest landed cost determinations. KCCO shall provide that information to an Ad Hoc Committee designated by the Administrator, FSA, to review the lowest landed cost determinations as a result of any or all of the factors referred to herein. If, after the committee makes its review and it is recommended that contracts should be awarded based on the additional factors which would override lowest landed cost determinations, these recommendations will be presented to the Contracting Officer for a final decision. These decisions will be fully documented and explained as to the reasons the lowest landed cost was not selected.

PART 1499—FOREIGN DONATION PROGRAMS

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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 any cause; Act of God; public enemies or pirates; arrest or restraint of princes, princesses, rulers of peoples without the fault of the carrier; wars; public disorders; captures; or detention by public authority in the interest of public safety.

General Sales Manager—General Sales Manager and Associate Administrator, Foreign Agricultural Service, USDA, who is a Vice President, CCC.

KCCO—Kansas City Commodity Office, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141-6205.

KCMO/DMD—Kansas City Management Office/Debt Management Division, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141-6205.