

(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

Sec.

- 1499.1 Definitions.
- 1499.2 General purpose and scope.
- 1499.3 Eligibility requirements for Cooperating Sponsor.
- 1499.4 Availability of commodities from CCC inventory.
- 1499.5 Program Agreements and Plans of Operation.
- 1499.6 Usual marketing requirements.
- 1499.7 Apportionment of costs and advances.

- 1499.8 Ocean transportation.
- 1499.9 Arrangements for entry and handling in the foreign country.
- 1499.10 Restrictions on commodity use and distribution.
- 1499.11 Agreement between Cooperating Sponsor and Recipient Agencies.
- 1499.12 Sales and barter of commodities provided and use of proceeds.
- 1499.13 Processing, packaging and labeling of section 416(b) commodities in the foreign country.
- 1499.14 Disposition of commodities unfit for authorized use.
- 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.
- 1499.16 Records and reporting requirements.
- 1499.17 Audits.
- 1499.18 Suspension of the program.
- 1499.19 Sample documents and guidelines for developing proposals and reports.
- 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