

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

Commodity Credit Corporation, USDA

§ 1499.5

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.

Ocean freight differential—the amount, as determined by CCC, by which the cost of ocean transportation is higher than would otherwise be the case by reason of the requirement that the commodities be transported on U.S.-flag vessels.

Program Agreement—an agreement entered into between CCC and Cooperating Sponsors.

Program income—interest on sale proceeds and money received by the Cooperating Sponsor, other than sales proceeds, as a result of carrying out approved activities.

Recipient agency—an entity located in the importing country which receives commodities or commodity sale proceeds from a Cooperating Sponsor for the purpose of implementing activities.

Sale proceeds—money received by a Cooperating Sponsor from the sale of commodities.

Section 416(b)—Section 416(b) of the Agricultural Act of 1949.

USDA—the United States Department of Agriculture.

[61 FR 60515, Nov. 29, 1996; 62 FR 2719, Jan. 17, 1997, as amended at 63 FR 59877, Nov. 6, 1998]

§ 1499.2 General purpose and scope.

This part establishes the general terms and conditions governing CCC's donation of commodities to Cooperating Sponsors under the section 416(b) and Food for Progress programs. This does not apply to donations to intergovernmental agencies or organizations (such as the World Food Pro-

gram) unless CCC and such intergovernmental agency or organization enters into an agreement incorporating this part.

§ 1499.3 Eligibility requirements for Cooperating Sponsor.

A Cooperating Sponsor may be either:

- (a) A foreign government;
- (b) An entity registered with the Agency for International Development (AID) in accordance with AID regulations; or
- (c) An entity that demonstrates to CCC's satisfaction:

(1) Organizational experience and resources available to implement and manage the type of program proposed, *i.e.*, targeted food assistance or sale of commodities for economic development activities;

(2) Experience working in the targeted country; and

(3) Experience and knowledge on the part of personnel who will be responsible for implementing and managing the program. CCC may require that an entity submit a financial statement demonstrating that it has the financial means to implement an effective donation program.

§ 1499.4 Availability of commodities from CCC inventory.

CCC will periodically announce the types and quantities of agricultural commodities available for donation from CCC inventory for the section 416(b) program.

§ 1499.5 Program Agreements and Plans of Operation.

(a) *Plan of Operation.* (1) Prior to entering into a section 416(b) Program Agreement, a Cooperating Sponsor shall submit a Plan of Operation to the Director, PDD and to the Agricultural Counselor or Attache, if an Agricultural Counselor or Attache is resident in the country where activities are to be implemented. After approval by CCC, the Plan of Operation will be incorporated into the section 416(b) Program Agreement as "Attachment A."

(2) CCC may require Cooperating Sponsors to submit a Plan of Operation in connection with the Food for Progress program.