

## **470.202 Acquisition of commodities for United States Agency for International Development (USAID) programs.**

*(a) Lowest landed cost and delivery considerations.*

(1) Except as provided in paragraphs (a)(3) and (d)(2) of this section, with respect to the acquisition of agricultural commodities for delivery to foreign destinations and related freight to transport such commodities under Title II of Public Law 83-480, contracts will be entered into in a manner that will result in the lowest landed cost of such commodity delivery to the intended destination. This lowest landed cost determination shall be calculated on the basis of rates and service for that portion of the commodities being purchased that is determined 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 procured and the additional factors set forth in this section. Accordingly, the solicitations issued with respect to a commodity procurement, or a freight procurement will specify that in the event an offer submitted by a party is the lowest offered price, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or freight, when combined with other offers for commodities or freight, results in a lower landed cost.

(2) USDA may contact any port prior to award 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. USDA may consider the use of another coastal range or port if a situation exists at a port that may adversely affect the ability of USDA to have the commodity delivered in a safe and/or timely manner. Such situations include:

(i) A port is congested;

(ii) Port facilities are overloaded;

(iii) A vessel would not be able to dock and load cargo without delay;

(iv) Labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or

(v) Other similar situation that may adversely affect the ability of the Department to have the commodity delivered in a timely manner.

(3) In order to ensure that commodities are delivered in a timely fashion to foreign destinations and without damage, USDA may complete an acquisition without regard to the lowest land cost process set forth in paragraph (a)(1) of this section, if:

(i) The solicitation specifies that the lowest land cost process will not be followed in the completion of the contract; or

(ii) After issuance of the solicitation, it is determined that:

(A) Internal strife at the foreign destination or urgent humanitarian conditions threatens the lives of persons at the foreign destination;

(B) A specific port's cargo handling capabilities (including the adequacy of the port to receive, accumulate, handle, store, and protect commodities) and other similar factors will adversely affect the delivery of such commodities without damage or in a timely manner. Such similar factors include, but are not limited to: Port congestion; overloaded facilities at the port; vessels 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; and the existence of inadequate or unsanitary warehouse and other supporting facilities;

(C) The total transit time of a carrier, as it relates to a final delivery date at the foreign destination may impair the ability of USDA to achieve timely delivery of the commodity; or

(D) Other similar situations arise that materially affect the administration of the program for which the commodity or freight is being procured.

(4) If the contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer shall provide to the HCA or Designee and to USAID, a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis. This request shall include a statement of the reasons for not using lowest landed cost basis. The HCA or Designee one level above the contracting officer, with the concurrence of USAID, shall, on an expedited basis, either accept or reject this request and shall document this determination in writing and provide a copy to USAID.

*(b) Freight shipping and rates.*

(1) In determining lowest-landed cost as specified in paragraph (a) of this section, USDA shall use vessel rates offered in response to solicitations issued by USAID or grantee organizations receiving commodities under 7 U.S.C. 1721 *et seq.*

(2) USAID may require, or direct a grantee organization to require, an ocean carrier to submit offers electronically through a Web-based system maintained by USDA. If electronic submissions are required, USDA may, at its discretion, accept corrections to such submissions that are submitted in a written form other than by use of such Web-based system.

*(c) Delivery date.* The contracting officer shall consider total transit time, as it relates to a final delivery date, in order to satisfy program requirements for Title II of Public Law 83-480.

*(d) Multiple awards or delivery points.*

(1) If more than one offer for the sale of commodities is received or more than one delivery point has been designated in such offers, 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, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(2) The contracting officer may determine that extenuating circumstances preclude awards on the basis of lowest landed cost. However, in all such cases, commodities may be transported in compliance with cargo preference requirements as determined by USAID.

(3) The contracting officer shall notify USAID or, if applicable, the grantee organization, that its

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

**Parent topic:** PART 470—COMMODITY ACQUISITIONS