

eligible exporter to the buyer. (Written evidence of sale may be in the form of a signed sales contract, an offer and acceptance between parties, or other documentary evidence of sale. The written evidence of sale for the purposes of the EEP must, at a minimum, document the following information: the eligible commodity, quantity, quality specifications, delivery terms (FOB, C&F, etc.) to the eligible country, delivery period, unit price, payment terms, date of sale, and evidence of agreement between buyer and seller. A sales contract with an intervening purchaser or an affiliate or subsidiary of the eligible exporter is not an eligible sales contract for the purpose of this subpart.)

(cc) *Transshipment*—The entry of the eligible commodity into a country other than the eligible country which occurs prior to the subsequent entry of the eligible commodity into the eligible country.

(dd) *Time*—All references to time shall refer to local time in Washington, DC.

(ee) *Unit of measure*—The unit of measure for the eligible commodity, as specified in the applicable Invitation.

(ff) *United States or U.S.*—All of the 50 States, the District of Columbia, and the territories and possessions of the United States.

(gg) *U.S. agricultural commodity.* (1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

[56 FR 25011, June 3, 1991, as amended at 60 FR 21039, May 1, 1995; 62 FR 24561, May 6, 1997]

§ 1494.301 Information required for program participation.

Before CCC will consider an offer from an interested person, such person must qualify for participation in the program. Based upon information submitted by the interested person and available from public sources, CCC will determine whether the interested person is eligible for participation in the program.

(a) *Submission of documentation.* An interested person that wishes to qualify as an eligible exporter must furnish the following information or documentation to CCC at the address referenced in the Notice to Exporters—EEP Contacts:

(1) The address of the interested person's office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the interested person, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the interested person, if the interested person is a corporation;

(4) The name and address of an office(s) of the interested person within the U.S., if the interested person is a foreign corporation or other foreign entity; and

(5) A certified statement describing the interested person's participation, if any, during the past three years in U.S. Government programs, contracts or agreements.

(6) The following certification: "I certify, to the best of my knowledge and belief, that neither [name of interested person] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. ["Principals," for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of

§ 1494.401

7 CFR Ch. XIV (1-1-11 Edition)

interested person] will immediately notify CCC.”

(b) *Necessity to qualify.* An interested person may not submit an offer, and CCC will not consider any such offer, until CCC has notified the interested person that such person has qualified as an eligible exporter.

(c) *Additional submissions.* CCC will promptly notify interested persons that have submitted information required by this section whether they have qualified to have their offers considered. Any person failing to qualify will be notified of the basis of CCC’s decision and will be given an opportunity to provide additional information for consideration by CCC.

(d) *Previous performance.* CCC may request additional information with respect to the interested person’s performance under any U.S. Government programs or in connection with any contracts or agreements with the U.S. Government during the past three years.

(e) *Ineligibility for program participation.* A person may be ineligible to participate in the EEP if such person:

(1) Is currently debarred, suspended or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or

(2) Is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by a U.S. Government agency.

(f) *Duty to update information provided to CCC.* An eligible exporter is under a continuing obligation to inform CCC of any changes in the information or documentation submitted to CCC pursuant to paragraph (a) of this section and to provide current and accurate information to CCC.

(g) *Payment of bonus to exporters without proven EEP participation.* An eligible exporter that has not yet demonstrated its ability to participate successfully in the EEP will be eligible to receive a bonus payment(s) only after the eligible commodity specified in an EEP Agreement has entered into the eligible country. Such an exporter must furnish performance security

under “Option B” of the applicable Invitation and follow the procedure specified in §1494.701(d) to request the payment of the bonus. An eligible exporter may demonstrate its ability to participate successfully in the EEP by entering or causing to be entered into the eligible country at least 95% of the quantity of the eligible commodity specified in any one EEP Agreement. CCC will consider that an exporter has proven its ability to participate successfully in the EEP as of the date on which CCC pays to the exporter a bonus for entry of a quantity that brings the total entered quantity for any one EEP Agreement to at least 95%. For all EEP Agreements that such exporter enters into with CCC subsequent to that date, the exporter may furnish performance security under “Option A” of the applicable Invitation and will be eligible to receive bonus payments in accordance with §1494.701(c).

[56 FR 25011, June 3, 1991, as amended at 60 FR 21039, May 1, 1995]

§ 1494.401 Performance security.

(a) *Requirement to establish performance security.* Prior to the submission of an offer to CCC in response to an Invitation, an eligible exporter must establish performance security, in a form which is acceptable to CCC, in order to guarantee the eligible exporter’s faithful performance of the Agreement. If CCC enters into an Agreement with the eligible exporter, this performance security must remain in effect until its cancellation or reduction is authorized by CCC pursuant to paragraph (f) of this section. An offer made by an eligible exporter will not be considered if proof of the establishment of the performance security is not made available to CCC by 3 p.m. on the date for which the offer is submitted for consideration.

(b) *Form of performance security.* The performance security must be acceptable to CCC and may be an irrevocable standby letter of credit, a bond, or a certified or cashier’s check. If a standby letter of credit is furnished as performance security, the opening bank may be a U.S. bank or a foreign bank. If the standby letter of credit is opened by a foreign bank, it must be 100 percent confirmed by a U.S. bank. If a